

ORIGINAL



0000110486

BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES
Chairman
GARY PIERCE
Commissioner
PAUL NEWMAN
Commissioner
SANDRA D. KENNEDY
Commissioner
BOB STUMP
Commissioner

2010 APR 29 P 4:39

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

APR 29 2010

DOCKETED BY	<i>mn</i>
-------------	-----------

IN THE MATTER OF QWEST
CORPORATION'S PETITION FOR
ARBITRATION AND APPROVAL OF
INTERCONNECTION AGREEMENT WITH
NORTH COUNTY COMMUNICATIONS
CORPORATION OF ARIZONA PURSUANT
TO SECTION 252(B) OF THE
COMMUNICATIONS ACT OF 1934, AS
AMENDED BY THE
TELECOMMUNICATIONS ACT OF 1996
AND APPLICABLE STATE LAWS

DOCKET NO. T-01051B-09-0383
T-03335A-09-0383

**QWEST CORPORATION'S RESPONSE
TO NORTH COUNTY
COMMUNICATION CORPORATION'S
MOTION TO DISMISS**

Qwest Corporation ("Qwest") replies to North County Communication
Corporation's ("North County") Motion to Dismiss Qwest's Petition for Arbitration.

INTRODUCTION AND SUMMARY

North County argues that its existing ICA with Qwest is a barrier to this Commission
arbitrating the parties' differences as they attempt to work in good faith to amend or replace the
existing ICA. North County's position is untenable and, if accepted, would force absurd results.
The language in the existing ICA imputes a request for interconnection, services, and network
elements to both parties after the 1997 ICA had been in effect for two years. The parties are thus
obligated to negotiate modifications or a successor agreement to the current ICA. If the parties'

1 negotiations reach an impasse, the Telecom Act affords them the opportunity to seek out this
2 Commission for binding arbitration. The Telecommunications Act of 1996 clearly establishes
3 the Arizona Corporation Commission's jurisdiction to arbitrate this dispute.

4 In essence, North County interprets Section 252 of the Telecom Act to afford jurisdiction
5 to state commissions to arbitrate disputes between local exchange carriers only when no ICA
6 already exists between them, contending that "nothing in the plain and unambiguous language of
7 47 U.S.C. §252 purports to give state utility commission jurisdiction to arbitrate attempted re-
8 negotiations of existing contracts that conclusively define the rights of the parties." *See*, North
9 County Motion to Dismiss, at pg. 7. North County's view of the Telecom Act would divest state
10 commissions of their long-established role as arbiters of local disputes that need not rise to the
11 FCC for resolution. Congress could not have intended for state commissions to arbitrate once
12 and then be divested of their Section 252 authority to resolve subsequent good faith disputes in
13 binding fashion.

14 North County's arguments are not supported by the two out-of-state cases that it cites and
15 attaches to its motion. Rather, those cases stand for the proposition that those state commissions
16 will not arbitrate additional terms and conditions (i.e., amendments to existing ICAs under
17 Section 252), but that in fact they will arbitrate new agreements in their entirety when, as in this
18 case, the original term of the ICA is over.

19 The Arizona Corporation Commission's Hearing Division has considered Section 252
20 requests for arbitration by the ILEC Qwest before, concluding that it made little sense to
21 foreclose an ILEC from participating on equal footing with CLECs by allowing CLECs to hold
22 all the power to invoke arbitration under Section 252.

23 North County has filed essentially the same motion to dismiss Qwest's petitions for
24 arbitration before the Washington and Oregon utilities commissions. The Washington
25 Commission has just this week denied North County's motions, citing the same rationale argued
26 by Qwest. *See*, Order Denying Motion to Dismiss, In the Matter of the Petition for Arbitration

1 of an Interconnection Agreement Between North County Communications Corporation of
2 Washington and Qwest Corporation, WUTC Docket-UT-093035, Order 06, April 26, 2010 (the
3 “WUTC Order”), a copy of which is attached, marked as Exhibit A.

4 In response to the Commission’s procedural order, North County filed its Response to
5 Qwest’s Petition for Arbitration on the same day as its Motion to Dismiss. North County’s
6 Response consists of further argumentation of its Motion to Dismiss, contending that it should
7 not be compelled to negotiate a new form of agreement when the old agreement is, in its words,
8 “clearly sufficient.” North County hints that Qwest’s specific mention of a dispute regarding
9 SS7 signaling has been resolved, and, “Therefore, the Petition does not state any basis intelligible
10 or compelling reason to arbitrate a new agreement over extremely minor non-issues[.]” North
11 County Response, p. 7, lines 9-13. North County’s theory that the old agreement is “clearly
12 sufficient” represents only North County’s own unilaterally held belief. North County’s theory
13 is not supportable. The facts demonstrate that Qwest unambiguously asked North County to
14 enter a new form of agreement, and that it has been North County’s decision to “ignore” (its
15 own words)¹ Qwest’s proposed agreement that resulted in Qwest’s inability to determine
16 whether there were other issues that required arbitration.

17 North County’s Motion to Dismiss should be denied. Further, because North County
18 failed to respond with specificity to Qwest’s request for approval of the new form of agreement,
19 the Commission should proceed to approve Qwest’s agreement, as filed with Petition.

20 **RELEVANT FACTUAL HISTORY**

21 This controversy and Qwest’s Petition for Arbitration arose out of a notice Qwest gave
22 to North County on July 2, 2008, exercising Qwest’s contractual and statutory right to
23 negotiate a new interconnection agreement (“ICA”). See, Affidavit of Jeffrey T. Nodland
24 (“Nodland Affidavit”), paragraph 2, and Affidavit Attachment 1. The Nodland Affidavit is
25 attached, marked as Exhibit B. Qwest’s contractual right to renegotiate the old ICA is

26 ¹ North County Response, p. 9, lines 1-9.

1 specifically provided in Section XXXIV. V. of the ICA, which states:

2 V. Term of Agreement

3 This Agreement shall be effective for a period of 2 1/2 years, and thereafter the
4 Agreement shall continue in force and effect unless and until a new agreement,
5 addressing all of the terms of this Agreement, becomes effective between the
6 Parties. The Parties agree to commence negotiations on a new agreement no later
7 than two years after this Agreement becomes effective.²

8 In giving that notice, Qwest specifically invoked Section 252 of the Telecom Act,
9 which provides the framework for state commission arbitration of matters that cannot be
10 resolved by negotiation between incumbent local exchange carriers ("ILECs") such as Qwest,
11 and competitive local exchange carriers ("CLECs") like North County. Qwest stated in its
12 July 2, 2008 notice:

13 This letter provides formal notice to North County Communications
14 Corporation ("North County") that Qwest Corporation ("Qwest") intends to
15 terminate the existing Interconnection Agreements (ICAs) in the states of
16 Arizona, Oregon and Washington. Qwest requests that, pursuant to section
17 252(a) of the Telecommunications Act of 1996, North County undertake
18 negotiations with Qwest for successor ICAs in the respective states.

19 ...
20 If we are unable to execute successor ICAs as set forth in the Federal
21 Telecommunications Act of 1996 ("Act"), Qwest intends to ask the respective
22 Commissions to arbitrate agreements pursuant to Section 251(b) of the Act.
23 Based on the date of this notification letter, the arbitration window during
24 which either party may file for arbitration commences on November 14, 2008
25 and ends on December 9, 2008, inclusive.³

26 The documented communications between the companies demonstrate that Qwest
informed North County that its purpose was to negotiate a new agreement that was not based
on the pre-1997 ICA form of agreement between the parties. In direct response to a
communication from North County asking for clarification of Qwest's intent, Qwest clearly
stated its intention to enter an altogether new form of agreement, in order to provide

² The ICA is attached as Exhibit A to Joseph A. Dicks Affidavit in Support of Motion to Dismiss. Section XXXIV V. is among the "Miscellaneous Terms section of the ICA, and appears on page 72.

³ Nodland Affidavit, paragraph 2, citing Affidavit Attachment A. (Emphasis added.)

1 consistency with most of its other ICAs, to promote fairness, provide economies of operation
2 to Qwest, and to assure that the ICA governing the transactions comports with the many
3 changes of law that have transpired over the previous ten or more years.⁴ North County did
4 not object to that stated purpose then. Qwest transmitted its proposed new form of agreement
5 to North County on September 12, 2008.⁵

6 Nor did North County object to Qwest's avowed intent to negotiate a new form of
7 agreement, and to arbitrate under Section 252 if necessary, when the "window" for
8 negotiation was extended by agreement of the parties. Todd Lesser of North County signed
9 the following extension statement on December 5, 2008:

10 This letter offers to extend the negotiation's [*sic*] window for a period of fifty-
11 two (52) days to allow the parties time to negotiate a new agreements [*sic*] in
12 Arizona, Oregon and Washington. The new period through which the parties
13 may file a petition seeking arbitration under Section 252(b) of the 1996
Telecommunications Act shall be January 5 through January 30, 2009,
14 inclusive.⁶

15 North County did not express refusal to negotiate a new agreement, then, or indeed at
16 any time before its recent filings in this docket.⁷ In fact, as the documented correspondence
17 demonstrates, North County gave every indication that it was both willing to negotiate from
18 the new form, and to arbitrate before the Commission under the auspices of the Telecom Act
19 if necessary. Including the "window extension" mentioned above, North County agreed to
20 extend the negotiations window under the Act no less than six times. Each extension was
21 signed by Todd Lesser of North County, and explicitly states that the parties may have
22 recourse to arbitration under Section 252 of the Act.⁸

23 During much of that time, North County had legal representation from Michael
24 Hazzard, a member of the nationally prominent law firm of Arent Fox. Arent Fox's website

24 ⁴ *Id.*, paragraph 4, citing Affidavit Attachment C.

25 ⁵ *Id.*, paragraph 5, citing Affidavit Attachment D.

26 ⁶ *Id.*, paragraph 7, citing Affidavit Attachment E. (Emphasis added).

⁷ *Id.*, paragraph 6,

⁸ *Id.*, paragraph 8, citing Affidavit Attachment F.

1 states that it is expert in telecommunications regulation, including negotiating and arbitrating
2 interconnection agreements.⁹ Mr. Hazzard was aware of the negotiations, including at least
3 one of the negotiations extensions. Mr. Hazzard stated that “We’re reviewing a bunch of
4 agreements to see if there is something that will work for us. My sense is that we will need a
5 few weeks, but we are willing to extend the arb deadline.”¹⁰

6 Throughout the lengthy period of extended negotiations, and up to the time Qwest
7 filed its Petition for Arbitration after nearly a full year of discussions, the only substantive
8 issue North County had raised about the text provisions of the new agreement concerned its
9 desire to maintain its outmoded signaling system.¹¹ Qwest proposed language to North
10 County with regard to the signaling issue, but North County did not accept it. So far as Qwest
11 was aware, the only impasse issue concerned the signaling matter. That explains why
12 Qwest’s Petition for Arbitration featured a discussion of that issue in the broader context of its
13 proposal to enter a new form of agreement. Qwest’s arbitration filing asked for arbitration
14 approval of the new form of agreement with the specially written signaling proposal inserted
15 by Qwest, but never accepted by North County.¹²

16 North County has rewritten history about what occurred:

17 1. North County asserts that Qwest’s proposed form of agreement was not the
18 framework for discussion. (North County Response, p. 8, lines 24-26). The history recited in
19 the Nodland Affidavit shows that Qwest’s proposed form of agreement was the only form
20 either party transmitted to the other; it was transmitted by Qwest and never rejected by North
21 County. North County cannot credibly claim that the 1997 ICA was the only document they
22 were considering, because North County’s attorney Michael Hazzard stated that “We’re
23 reviewing a bunch of agreements to see if there is something that will work for us.”¹³

24 ⁹ *Id.*, paragraph 9, citing Affidavit Attachment G.

25 ¹⁰ *Id.*, paragraph 10, citing Affidavit Attachment H.

26 ¹¹ *Id.*, paragraph 11.

¹² *Id.*

¹³ *See*, fn. 10.

1 2. North County asserts that its very first question in negotiations was why any
2 new agreement was needed, and that question was only met with "Qwest's party line that a
3 new agreement was the only basis it would discuss." North County Response, page 9, lines 1-
4 3. The Nodland Affidavit reveals that Qwest's response documented sound reasons for
5 working from the new form of agreement. That Qwest is not asking for anything out of the
6 ordinary is evident from that fact that the template Qwest has requested to be the basis of the
7 transaction with North County is the foundational document for all but five of the currently
8 active wireline ICAs Qwest has in Arizona. ¹⁴

9 3. North County claims that it "ignored" Qwest's "ultimatum", while always
10 reserving its position that the existing ICA is sufficient. North County Response, p. 9, lines 1-
11 9. Of course the problem with ignoring a request in the way that North County did, is that the
12 other party has no indication that it is being ignored. North County entered discussions
13 regarding the signaling issue. Qwest had no contemporaneous indication from North County
14 that North County had no intention of entering a new agreement and that it was "reserving its
15 position."¹⁵

16 4. North County claims that "From the outset, North County only agreed to even
17 consider discussing the proposed agreement on the basis that Qwest sign a written averment
18 that it does not substantially change the rights of the parties from the old agreement." North
19 County Response, p. 9. Qwest denies that it was asked to "sign a written averment" that the
20 new form of agreement would not change the rights of the parties from the old agreement, or
21 that was Qwest informed by North County that such a representation was a precondition to
22 North County's consideration of a new agreement. It is true that Mr. Lesser of North County
23 asked why it was necessary to sign a new agreement,¹⁶ and it is true that North County did ask
24

25 ¹⁴ Nodland Affidavit, paragraph 14.

26 ¹⁵ Nodland Affidavit, paragraph 13.

¹⁶ *Id.*, paragraph 5.

1 for assurances that the new agreement would not financially impact North County.¹⁷
2 However, Qwest's personnel repeatedly replied that Qwest could not speak to the impacts on
3 North County but that Qwest was at all times willing to discuss with North County the
4 meaning and interpretation of the new agreement. In good faith, Qwest personnel attempted
5 to point out several matters that Qwest believed might have an impact, but always being clear
6 that Qwest is not familiar with North County's business, and could not anticipate the issues
7 North County may have with any given provision.¹⁸ It is incumbent on each CLEC to make
8 its own judgments in that regard.

9 5. Even though Qwest does not have a duty to proactively evaluate each
10 provision of its new ICA form in the context of any particular CLEC's business, and despite
11 North County's latent assertion that it "was ignoring" Qwest's form of agreement, it became
12 apparent to the parties in the months following the filing of the Petition for Arbitration that
13 the "relative use factor" ("RUF") would be a matter of concern for North County. North
14 County complains that the RUF was not a matter addressed in the Petition and is therefore not
15 before the Commission. *See*, North County Response, p. 10, lines 23-25. Qwest states that
16 the RUF was not raised specifically in the Petition because at the time North County had not
17 then made any objections in that regard. North County's lack of diligence in evaluating
18 Qwest's proposal left Qwest with the entirely reasonable understanding that North County did
19 not object to such provisions.¹⁹

20 In summary of the relevant facts surrounding this controversy, North County failed to
21 respond meaningfully and substantively to Qwest's request for negotiation of a new agreement.
22 Although North County did not inform Qwest of its intentions, North County purposefully failed
23 to conduct due diligence about the proposed agreement, and unreasonably stuck its head in the
24 sand. Except for limited discussion of the signaling technology and the ramifications of North

25 ¹⁷ *Id.*, paragraph 11.

26 ¹⁸ *Id.*

¹⁹ *Id.*, paragraph 15.

1 County's reluctance to move to SS7, there were no substantive responses about the proposed
2 agreement. Consequently, Qwest had no notion of North County's unwillingness to negotiate
3 Qwest's proposed agreement. Qwest's Petition for Arbitration, which asked for approval of the
4 proposed agreement, specifically mentioned only the signaling issue. However, the Petition is
5 not deficient, because the Petition unmistakably requested arbitration and approval of the new
6 form, which was attached to the Petition.

7 ARGUMENT

8 9 I. THE STATUTORY FRAMEWORK OF SECTION 252 OF THE ACT

10
11 North County argues that the plain language of the 1996 Act prohibits Commission
12 arbitration of renegotiations of ICAs under the Act. This argument has been considered and
13 rejected by several state commissions, and is not supported by the cases that North County
14 cites.

15 North County essentially argues that the Act limits arbitration proceedings to those
16 cases where the parties do not have an ICA, or have never previously entered into an ICA. This
17 argument, carried to its logical conclusion, would lead to absurd results — that existing ICAs
18 continue *in perpetuity*, and that *only the CLEC*, at its whim, may request negotiation of a new
19 ICA, and then only after terminating its existing ICA. North County's argument, if accepted,
20 would further require the Commission to conclude that all the arbitrations it has conducted
21 after the first round of arbitrations in 1996-1997 were invalid. These results are not supported
22 by the law.²⁰

23
24 ²⁰ For example, the Commission has arbitrated and approved numerous successor ICAs, such as
25 successor ICAs between Qwest and AT&T (Docket No. T-01051B-03-0553), Qwest and
26 Covad (Docket No. T-01051B-04-0425), Qwest and Level 3 (Docket No. T-01051B-05-0350),
Qwest and Arizona Dialtone (Docket No. T-01051B-07-0693), and Qwest and Eschelon
(Docket No. T-01051B-06-572). Numerous other state commissions, including commissions in
Qwest's region have arbitrated successor ICAs.

1 Further, even if North County were correct that Qwest must first be in receipt of a
2 request for negotiation of interconnection terms in order to initiate arbitration, North County
3 must be deemed to have requested negotiations under the terms of the 1997 ICA, which
4 provides that:

5 [t]his Agreement shall be effective for a period of 2 1/2 years, and thereafter the
6 Agreement shall continue in force and effect unless and until a new
7 agreement, addressing all of the terms of this Agreement, becomes effective
8 between the Parties. The Parties agree to commence negotiations on a new
9 agreement no later than two years after this Agreement becomes effective. *See* ICA,
10 § XXXIV.V, p. 73, Exhibit A to the Affidavit of Joseph G. Dicks in support of
11 North County's Motion to Dismiss.²¹

12 A provision that binds the parties to negotiate, but does not allow arbitration of any
13 disputed terms, would be meaningless. Thus, under the ICA's language, and by North County's
14 own agreement, negotiations for a successor agreement were opened last year, and under the
15 language of Section 252 of the Act, arbitration may be requested after negotiations have been
16 unsuccessful.

17 North County specifically signed concurrences to extend the "negotiation window" six
18 times, and each of those documents specifically stated that either party could petition for
19 arbitration under the Act. Besides demonstrating that North County's current position is a
20 recent invention, those documents provide strong evidence that the parties to the contract

21 ²¹ Qwest also expects North County to argue that the current ICA renegotiation language does not
22 cite to section 252 and therefore the parties did not intend for that section to apply. Such an
23 argument would require the Commission to ignore the fact that the existing ICA is a *section 252*
24 *agreement*, that this Commission *approved* it as a section 252 agreement, that the only reason the
25 parties have this agreement is *because of section 252*, and that the very first provision of the current
26 agreement provides that it is *pursuant to Section 252*. Indeed, Section I, Recitals, of the ICA
states:

27 This Agreement is a combination of agreed terms and terms imposed by arbitration
28 under *Section 252 of the Communications Act of 1934, as modified by the*
29 *Telecommunications Act of 1996 ("the Act")*[.]

1 interpreted the old negotiation clause as being subject to Section 252 arbitration.

2 Nor does the Act preclude an ILEC from filing a request for §252 arbitration. The
3 Arizona Corporation Commission's Hearing Division has considered Section 252 requests for
4 arbitration by the ILEC Qwest before. In the Qwest Arizona Dialtone arbitration,²² the Hearing
5 Division asked the parties and the Staff to brief the question of whether an ILEC may initiate
6 negotiations that lead to compulsory arbitration under that section of the Act. After review of
7 the legislative history, the statutory text, FCC decisions and various state commissions'
8 interpretations, this Commission concluded that while the literal wording of the Act did not
9 precisely permit an ILEC-requested arbitration, it made little sense to foreclose an ILEC from
10 participating on equal footing with CLECs by allowing CLECs to hold all the power to invoke
11 arbitration under Section 252.²³

12 The Commission stated:

13 Empowering one party to an existing contractual relationship to seek negotiation
14 that provides a right to arbitration while withholding that power from the other
15 party to the contractual relationship could create the type of anticompetitive
16 imbalance that the Act was designed to remedy, as it places the ILEC into a
17 weaker position and seemingly insulates the CLEC from changes in the market and
18 potentially even the law.²⁴

19 There is no reason to apply a different public policy in this instance.

20 **II. THE COMMISSION HAS JURISDICTION TO ARBITRATE A SUCCESSOR**
21 **INTERCONNECTION AGREEMENT**

22 North County's main argument is that the Commission somehow lacks subject matter
23 jurisdiction to arbitrate a replacement agreement when there is already an existing ICA in effect,

24 ²² *In the Matter of Qwest Corporation Petition for Arbitration and approval of Amendment to*
25 *Interconnection agreement with Arizona Dialtone, Inc.* Docket Nos. T-01051B-07-0693 and T-
26 03602A-07-0693

²³ *Id.*, Procedural Order, January 31, 2008, page 9. A copy of the Procedural Order is attached,
marked as Exhibit C.

²⁴ *Id.*

1 despite the fact that the Commission has arbitrated many agreements that replace prior ICAs.
2 Under North County's theory, the Commission would have lacked subject matter jurisdiction to
3 arbitrate those agreements. This Commission arbitrated successor agreements between Qwest
4 and AT&T, Covad, Level 3 and Eschelon, among others. *See* footnote 19 *supra*. If North
5 County's position was correct, these arbitrations would be of no effect, and the ICAs would not
6 be valid agreements. The error of North County's theory is apparent when it is extended to its
7 logical conclusion.

8 A. North County Has Made, and Lost, the Same Motion to Dismiss in Washington

9 North County has filed nearly identical motions to dismiss Qwest's Petitions for Arbitration
10 in Washington and Oregon. The Washington Commission has just this past week ruled against
11 North County, citing Qwest's arguments. See, Exhibit A.

12 B. North County's Cited Precedent Supports Qwest's Arguments

13 North County cites two cases in support of its arguments — decisions from Alaska and
14 Ohio. Motion, pp. 6-9. Neither decision supports North County's position, however. In fact,
15 both support Qwest's position here.

16 The Alaska decision (attached as Exhibit B to the J. Dicks Affidavit filed with North
17 County's motion) addressed the issue of whether arbitration may be sought on issues *already*
18 *addressed in the ICA, during the initial term of the ICA*. The Alaska Commission held that it
19 may not. Unlike this case, the petitioner in Alaska sought arbitration in 2002, on issues
20 addressed in an ICA that was approved in 2000, and expired in 2003. In this case, the original
21 agreement is long past its initial term, and Qwest is not seeking arbitration of existing terms of
22 the ICA during its original effective period. Thus, the Alaska case is not on point.

23 The Ohio case (attached as Exhibit C to the J. Dicks Affidavit filed with the North
24 County's motion) is not on point either. In Ohio, the Commission held that GNAPs (the
25 petitioner) was actually seeking arbitration to add terms to an existing ICA, rather than to
26 arbitrate a replacement or successor agreement. The Commission specifically acknowledged

1 that GNAPs could pursue negotiation (and presumably arbitration) of a successor agreement.
2 That is precisely what Qwest is seeking here. Thus, contrary to North County's arguments, the
3 Ohio case, to the extent that it applies, actually supports Qwest's petition.

4 C. Other Precedents Support Qwest's Position As Well

5 A state commission decision that North County does not cite, from Oregon, is quite
6 similar to this dispute. *See* Order No. 05-088 in Docket ARB 589. In that proceeding, Qwest
7 had an ICA with a CLEC, Universal Telecom, Inc., that expired in 2000 which remained in
8 "evergreen status" (in effect until replaced) until 2004, when Qwest requested negotiations with
9 Universal pursuant to Section 252(a) of the Act. Like North County, Universal did not respond
10 to the request, and thus Qwest petitioned the Commission to arbitrate terms, conditions, and
11 prices for interconnection and related arrangements.

12 Universal then filed a motion to dismiss Qwest's petition, contending that neither the
13 terms of the existing ICA, nor any provision of the Act authorized Qwest's request. In assessing
14 this argument, the Commission stated that "the plain language of the statute does not set forth an
15 obligation for the CLEC to negotiate upon a request by an ILEC," but "that [ICAs] which
16 expressly permit either party to commence negotiations may supplement the Act's language
17 which permits only the CLEC to commence negotiations." In that docket, the Commission
18 found that the following language in the ICA (similar to the language here) gave Qwest the
19 right to commence negotiations: "The Parties agree to commence negotiations on a new
20 agreement no later than two years after this Agreement becomes effective."²⁵ In a subsequent
21 order, the Commission found that this language gave Qwest the right to commence negotiations
22 even after the two-year period had expired. Order No. 05-206 in Docket ARB 671.²⁶

23 Other state commission decisions support the general proposition that evergreen clauses

24 ²⁵ Qwest notes that both Universal and North County had essentially the same agreement at
25 issue- an opt-in to the historic MFS agreement.

26 ²⁶ Qwest then filed a petition for arbitration (Docket ARB 671) that resulted in a Commission
order adopting the Arbitrator's Decision on the merits (Order No. 06-190), and a Commission
order approving an ICA (Order No. 06-484), after a fully-contested proceeding.

1 cannot be abused by CLECs in order to extend ICAs in perpetuity. *See, e.g., In re Application by*
2 *Pacific Bell Telephone Company*, 2006 WL 1069543, at 9 (Cal. P.U.C. Apr. 19, 2006) ("MCI
3 needs a successor ICA if it wants to continue in business. The existing evergreen provision
4 continues the ICA, *but only during negotiations or arbitrations*. MCI must either negotiate or
5 arbitrate a successor ICA, or it will be unable to continue normal business operations.")
6 (emphasis added); *Re MCI Metro Access Transmission Services, Inc.*, 2004 WL 3119795, at * 10
7 (111.C.C. 2004) ("The Commission finds that Staffs proposal addresses both MCI's desire to
8 maintain the terms and conditions upon expiration of the ICA, and SBC's concern about the use
9 of *sham negotiations to artificially extend an expired ICA*. The expiring ICA therefore should
10 continue in effect for a finite period during negotiations of a successor ICA.") (emphasis added).
11 Alternatively, even if the ICA did not give Qwest the right to initiate negotiations (i.e., request
12 interconnection), under basic principles of contract law, North County cannot extend the expired
13 ICA in perpetuity simply by refusing to negotiate with Qwest, unless there is strong language in
14 the ICA giving the CLEC that right, which the law disfavors,²⁷ and which does not exist here.

15 Finally, it is worth mentioning the Ninth Circuit's decision in *Pacific Bell v. Pac-West*
16 *Telecomm, Inc.*, 325 F.3d 1114 (2003). Although North County did not cite it, this is a case
17 frequently cited in support of the proposition that interconnection agreements, once approved by a
18 state commission, are binding between the parties and have the force and effect of law. Yet
19 even in that case, the court only invalidated the California Commission's general rulemaking
20 order which purported to affect ICAs statewide — the court *affirmed* the Commission's arbitration

21
22 ²⁷ *See, Tucker v. Byler*, 558 P.2d 732, 1976 Ariz. App. LEXIS 702, 27 Ariz. App. 704 ("[t]he
23 policy of the law is that if a lease can be reasonably construed as one for a term certain as
24 compared to an equally reasonable construction that the lease is in perpetuity, the construction
25 favoring a term certain shall be adopted, there being a policy against perpetuities"); *see also,*
26 *Dover Copper Mining Co. v. Doenges*, 40 Ariz. 349; 12 P.2d 288; 1932 Ariz. LEXIS 212 (Citing
and following *Echols v. New Orleans, J. & G.N.R. CO.*, 52 Miss. 610 ("With regard to the
theory of perpetual duration little need be said. Perpetual contracts of this character will not be
tolerated by the law, or rather, will not be enforced as imposing an eternal and neverending
burden."

1 and approval of a successor agreement between Pacific Bell and Pac-West, the exact activity
2 that Qwest is asking the Commission to undertake here.

3
4 **III. NORTH COUNTY'S POSITION HERE IS INCONSISTENT WITH ITS PRIOR**
5 **ACTIONS**

6 Moreover, North County's previous actions are inconsistent with its new legal position.
7 North County ostensibly consented to negotiations of an ICA over the period of many months,
8 but now claims that all the while it harbored the intention to "ignore" what it now characterizes
9 as "Qwest's ultimatum."

10 North County's previous conduct belies its position in this motion. As Qwest noted in
11 its petition for arbitration, Qwest first gave North County formal notice of its intent to
12 terminate the existing 1997 ICA with a new ICA "pursuant to Section 252(a) of the
13 Telecommunications Act of 1996" on July 2, 2008. See Affidavit Attachment A. After not
14 receiving any response, Qwest sent another letter on August 8, 2008, again stating the same
15 thing. Affidavit Attachment B. After North County asked whether Qwest intended to cancel
16 the "old agreements" or a recent amendment, Qwest clarified on August 13, 2009 why it was
17 requesting negotiations under section 252(a). Attachment C. Qwest again explained its
18 position under section 252(a) on September 12, 2008. Attachment D. North County then
19 agreed to enter into extensions of *each* party's rights to *negotiate a new agreement* and to *file a*
20 *petition for arbitration* under section 252(b) of the 1996 Telecommunications Act. Indeed,
21 North County signed no less than six extensions on December 5, 2009, January 16, 2009,
22 February 9, 2009, April 29, 2009, May 29, 2009, and June 25, 2009. See Affidavit
23 Attachments E and F. More importantly, in each extension, North County specifically
24 acknowledged that each party had the right to negotiate a new agreement, and that each party
25 had a right to file a petition seeking arbitration. Obviously, if North County truly believed that
26 the Commission had no jurisdiction, it could have (and Qwest submits that under principles of

1 good faith negotiation, it should have) advised Qwest of that fact, instead of entering into continual
2 extensions.

3 The Commission must find that North County's conduct weighs heavily against its
4 motion.

5 **IV. NORTH COUNTY'S RESPONSE TO QWEST'S PETITION IS PRIMARILY**
6 **ARGUMENTATION IN SUPPORT OF ITS MOTION TO DISMISS; NORTH COUNTY'S**
7 **FAILURE TO IDENTIFY SUBSTANTIVE ISSUES OF DISAGREEMENT EFFECTIVELY**
8 **WAIVES FURTHER ANSWER OR OBJECTION TO QWEST'S PROPOSED AGREEMENT**

8 From the facts stated above, it is apparent that North County failed to respond meaningfully
9 and substantively to Qwest's request for negotiation of a new agreement. Although North
10 County did not inform Qwest of its intentions, North County's pleadings demonstrate that it
11 purposefully failed to conduct due diligence about the agreement and unreasonably stuck its head
12 in the sand. Except for limited discussion of the signaling technology and the ramifications of
13 North County's reluctance to move to SS7, North County made no substantive responses
14 regarding the proposed agreement. Consequently, Qwest had no notion of North County's
15 unwillingness to negotiate Qwest's proposed agreement. Qwest's Petition for Arbitration, which
16 asked for approval of the proposed agreement, specifically mentioned only the signaling issue.
17 However, the Petition was not deficient, because the Petition unmistakably requested arbitration
18 and approval of the new form, which was attached to the Petition.

19 Now, even though the Commission ordered North County to file its response to Qwest's
20 Petition for Arbitration, North County's Response filed on April 9, 2010 is given over to
21 argumentation in support of its motion to dismiss theories. North County did not respond with
22 specificity to any issue with respect to Qwest's proposed agreement.

23 North County's arguments that Qwest's Petition is deficient must be rejected for the
24 reasons stated above. North County's unyielding refusal to critically analyze and respond to
25 Qwest's proposed agreement should not be rewarded by allowing them more time. In addition to
26 denying North County's Motion to Dismiss, the Commission should find that North County's

1 failure to object to the agreement filed by Qwest for approval acts as a waiver.

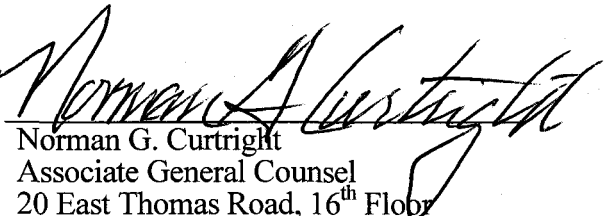
2
3 **CONCLUSION**

4 In conclusion, Qwest respectfully asks the Commission to deny North County's motion to
5 dismiss, and to approve the agreement filed by Qwest with its Petition for Arbitration.

6
7 RESPECTFULLY SUBMITTED, this 29th day of April, 2010.

8 QWEST CORPORATION

9
10
11 By:


Norman G. Curtright
Associate General Counsel
20 East Thomas Road, 16th Floor
Phoenix, Arizona 85012
Telephone: (602) 630-2187

1
2 **Original and 13 copies of the foregoing**
3 **were filed this 29th day of April, 2010 with:**

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington Street
7 Phoenix, AZ 85007

8
9 **COPY of the foregoing emailed**
10 **this 29th day of April, 2010 to:**

11 Jane L. Rodda
12 Administrative Law Judge
13 Arizona Corporation Commission
14 1200 West Washington Street
15 Phoenix, AZ 85007

16 Janice Alward, Chief Counsel
17 Legal Department
18 Arizona Corporation Commission
19 1200 West Washington Street
20 Phoenix, AZ 85007

21 Steve Olea, Director
22 Utilities Division
23 Arizona Corporation Commission
24 1200 West Washington Street
25 Phoenix, AZ 85007

26 **COPY of the foregoing mailed**
this 29th day April, 2010 to:

Joseph G. Dicks
DICKS & WORKMAN, APC
2720 Symphony Towers, 750 B Street
San Diego, CA 92101-8122

22 
23 _____
24
25
26

EXHIBIT A

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for)	DOCKET UT-093035
Arbitration of an Interconnection)	
Agreement Between)	
)	ORDER 06
NORTH COUNTY)	
COMMUNICATIONS)	
CORPORATION OF WASHINGTON)	ORDER DENYING
)	MOTION TO DISMISS
and)	
)	
QWEST CORPORATION)	
)	
Pursuant to 47 U.S.C. Section 252(b).)	
.....)	

- 1 **NATURE OF PROCEEDING.** Docket UT-093035 involves a petition by Qwest Corporation (Qwest) for arbitration and approval of an interconnection agreement (ICA) with North County Communications Corporation of Washington (North County) pursuant to 47 U.S.C. §252(b) of the Telecommunications Act of 1996 (Telecom Act).

- 2 **MOTION TO DISMISS.** On March 29, 2010, North County filed a motion to dismiss the proceeding, asserting that the Commission lacks jurisdiction to arbitrate the dispute. On April 9, 2010, Qwest filed its response. On April 16, 2010, North County filed its reply along with the requisite petition to file a reply pleading.

- 3 **APPEARANCES.** Joseph Dicks and Chris Reichman, Dicks & Workman, APC, San Diego, California, represent North County. Lisa A. Anderl, Associate General Counsel, Seattle, Washington, represents Qwest.

- 4 **PARTY POSITIONS.** North County argues that unless Qwest makes a request to North County for interconnection, services, or network elements pursuant to Section 251 of the Telecom Act, Qwest has no authority to initiate negotiations or arbitration under Section 252 of the Telecom Act. According to North County, neither party could have made a request for interconnection or any other form of services or network elements from the other because the parties are *already* interconnected and

have been since 1997. North County contends this prevents Qwest from making such a request and therefore invalidates Qwest's petition for arbitration.¹

- 5 In sum, North County contends that the existence of a currently effective ICA between North County and Qwest precludes the Commission from exercising jurisdiction under Section 252 of the Telecom Act to arbitrate a dispute between the parties over Qwest's proposed terms for a replacement ICA.²
- 6 Qwest counters North County's argument by pointing out that, taken to its logical conclusion, existing ICAs would be forced to exist in perpetuity without modification until and unless the parties terminate the agreement and negotiate a replacement.³ Qwest relies on the terms of its existing ICA with North County that set an effective period of two and one-half years with a continuation clause preserving the ICA in force until a new agreement can be negotiated.⁴ Qwest argues that the parties mutually agreed in their 1997 ICA to initiate negotiations no later than two years after its effective date, meaning that North County is deemed to have requested negotiations. According to Qwest, this undermines North County's current arguments which attempt to preclude the Commission from arbitrating the parties' stalemate regarding signaling technology.⁵
- 7 In its lengthy reply, North County reiterates its disagreement with Qwest's attempt to negotiate terms to update a decade-old ICA between the parties.⁶

¹ North County Motion to Dismiss, at pg. 4.

² *Id.* at pp. 3-5. North County goes so far as to suggest that "Congress did not want to give carriers the right to re-negotiate new interconnection agreements and compel costly state utilities commission arbitration proceedings whenever a carrier felt like it." *See* pg. 5.

³ Qwest Answer to NCC Motion to Dismiss, ¶ 5 and ¶ 12.

⁴ *Id.* at ¶ 6 and ¶ 13.

⁵ *Id.*

⁶ In compliance with WAC 480-07-370(1)(d), North County's Reply was accompanied by a motion seeking permission to file the reply. In order to document the tone of negotiations between the parties, the Commission will accept and allow North County's reply pleading.

8 **COMMISSION DECISION.** North County argues that its existing ICA with Qwest is a barrier to this Commission arbitrating the parties' differences as they attempt to work in good faith to amend or replace the existing ICA. North County's position is untenable and, if accepted, would force absurd results. Qwest correctly points out that language in the existing ICA imputes a request for interconnection, services, and network elements to both parties after the 1997 ICA had been in effect for two years. The parties are thus obligated to negotiate modifications or a successor agreement to the current ICA. If the parties' negotiations reach an impasse, the Telecom Act affords them the opportunity to seek out this Commission for binding arbitration. As explained below, we must conclude that the Telecom Act clearly establishes our jurisdiction to arbitrate this dispute.

9 In essence, North County interprets Section 252 of the Telecom Act to afford jurisdiction to state commissions to arbitrate disputes between local exchange carriers only when no ICA already exists between them.⁷ North County's view of the Telecom Act would divest state commissions of their long-established role as arbiters of local disputes that need not rise to the FCC for resolution. We do not believe that the FCC intended for state commissions to arbitrate once and then be divested of their Section 252 authority to resolve subsequent good faith disputes in binding fashion.

10 North County's reliance on decisions from the Alaska and Ohio commissions is misplaced. In Alaska, the parties had a relatively new ICA that, under its own terms, had not yet met its three-year term of expiration. The Alaska Commission did not refuse to arbitrate a dispute to modify an existing ICA but simply declined to take up issues where the parties had already agreed to be bound under the provisions of the existing ICA.⁸ Here, the ICA between North County and Qwest is not new and has, under its own terms, expired and become ripe for review and renewed negotiation.

⁷ North County most succinctly states its position when it contends "[a] carrier simply cannot compel arbitration on issues settled by an existing interconnection agreement." North County Motion to Dismiss, at pg. 7.

⁸ See, *In re GCI Communication Corp. and ACS of the Northland, Inc., Regulatory Commission of Alaska Order Granting Petition for Arbitration, Appointing Arbitrator and Ordering Prehearing Conference* (August 29, 2002), at text accompanying notes 25-26.

- 11 In Ohio, the parties entered an ICA in 2002 that deferred issues of voice over Internet protocol (VoIP) to a later date. When one party sought to have the Ohio Public Utilities Commission arbitrate the matter of proper compensation for VoIP-related services, the Commission refused to do so because arbitration of a single issue, rather than a successor ICA, was inconsistent with the ICA's dispute resolution provisions.⁹ Here, the dispute resolution provision of the North County – Qwest ICA requires only a good faith *attempt* to resolve disputes between the parties through negotiation or non-binding arbitration but does not waive any party's right to seek regulatory intervention as provided by law.¹⁰
- 12 Section 252 of the Telecom Act contains no limitations on the number of arbitrations a state commission can conduct between parties negotiating to enter a new ICA or a successor agreement. Further, the parties' ICA, entered more than a dozen years ago, commits both North County and Qwest "to commence negotiations on a new agreement no later than two years after this Agreement becomes effective."¹¹ By its own terms, the existing ICA was intended to be reconsidered and, if necessary, modified to comport with the developing demands of telecommunications technology and the needs of the parties.
- 13 In the case now presented, Qwest seeks to require North County to upgrade its signaling technology and North County apparently does not wish to do so under the terms offered by Qwest. Qwest alleges there is a good faith dispute between the parties preventing the creation of a successor ICA. Neither the Telecom Act nor the terms of the parties' existing ICA deprives the Commission of jurisdiction to arbitrate the dispute between the parties. Therefore, North County's motion to dismiss Qwest's petition for arbitration must be denied.

⁹ *In the Matter of the Petition of Global NAPs Ohio for Arbitration with the Ohio Bell Telephone Company, Ohio Public Utilities Commission* (January 7, 2010).

¹⁰ North County Communications Corporation and US West Communications, Inc., Arbitrated Interconnection Agreement for the State of Washington, at pg .74.

¹¹ *Id.* at pg. 72.

ORDER

THE COMMISSION ORDERS:

- 14 (1) North County's Petition to Reply is granted.
- 15 (2) North County's Motion to Dismiss is denied.
- 16 (3) North County is directed to timely file its Answer to Qwest's petition as required by the procedural schedule established in Order 05.

Dated at Olympia, Washington, and effective April 26, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.

EXHIBIT B

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **KRISTIN K. MAYES**

Chairman

3 **GARY PIERCE**

Commissioner

4 **PAUL NEWMAN**

Commissioner

5 **SANDRA D. KENNEDY**

Commissioner

6 **BOB STUMP**

Commissioner

7
8 IN THE MATTER OF QWEST
9 CORPORATION'S PETITION FOR
10 ARBITRATION AND APPROVAL OF
11 INTERCONNECTION AGREEMENT WITH
12 NORTH COUNTY COMMUNICATIONS
13 CORPORATION OF ARIZONA PURSUANT
14 TO SECTION 252(B) OF THE
15 COMMUNICATIONS ACT OF 1934, AS
16 AMENDED BY THE
17 TELECOMMUNICATIONS ACT OF 1996
18 AND APPLICABLE STATE LAWS

DOCKET NO. T-01051B-09-0383
T-03335A-09-0383

**AFFIDAVIT OF JEFFREY T.
NODLAND IN SUPPORT OF QWEST
CORPORATION'S RESPONSE TO
NORTH COUNTY'S MOTION TO
DISMISS**

15
16 Jeffrey T. Nodland, of lawful age and being first duly sworn, deposes and states:

17
18 1. My name is Jeffrey T. Nodland. I am Associate General Counsel for Qwest Corporation
19 ("Qwest") in Denver, Colorado. Among my other duties, I am an in-house legal advisor to
20 the Qwest personnel who negotiate and manage interconnection agreements between Qwest
21 and competitive local exchange carriers such as North County. I am personally familiar with
22 Qwest's notice to terminate the existing interconnection agreement (ICA) in Arizona, the
23 negotiations that followed such notice, and the Petition for Arbitration. The principal
24 participants on behalf of Qwest in such discussions were Nancy Donahue and myself. I
25 have a file of all written communications between Ms. Donahue and me and North County
26 and its representative. The copies of communications attached to this Affidavit are all true

1 and correct reproductions of the file copies which are kept by Qwest in the ordinary course of
2 its business.

3 2. A copy of the letter Qwest Corporation transmitted to North County Communications
4 Corporation ("North County") on July 2, 2008, is attached, marked as Attachment A. By that
5 letter Qwest notified North County that Qwest intended to terminate the exiting
6 Interconnection Agreement in Arizona, and to undertake negotiations for a successor ICA
7 pursuant to Section 252(a) of the Telecommunications Act of 1996.

8 3. A copy of the letter Qwest transmitted to North County on August 8, 2008, is attached,
9 marked as Attachment B. The letter repeated Qwest's message from the July 2 letter, and
10 asked for a response.

11 4. Copies of emails exchanged between Todd Lesser of North County and Nancy Donahue of
12 Qwest on August 7, 2008, and August 13, 2008, respectively, are attached, marked as
13 Attachment C.

14 5. A copy of an email transmitted by Nancy Donahue of Qwest to Todd Lesser of North County
15 on September 12, 2008, is attached, marked as Attachment D. By that email, Ms. Donahue
16 sent Mr. Lesser an electronic copy of Qwest's then-current negotiation template, with the
17 request that "for purposes of negotiations" Mr. Lesser should "please review the electronic
18 version of the Multi-State Negotiation ICA and e-mail suggested revisions in a red-lined
19 form. Ms. Donahue also noted that the parties "can schedule one or more negotiations
20 sessions to discuss North County's proposed modifications." Mr. Lesser did not object at
21 that time, other than to state that he did not understand why a new agreement was necessary
22 between North County and Qwest, to which Ms. Donahue and I responded that the existing
23 agreement was very dated and the new form matches better to Qwest's current processes and
24 incorporates applicable commission decisions.

25 6. The agreement form attached to Ms. Donahue's email sent on September 12, 2008 is not
26 attached to this Affidavit because of its bulk. The form is substantially the same as that

1 which was filed with Qwest's Petition for Arbitration. North County did not provide another
2 form of agreement to discuss in the negotiations, did not provide suggested revisions to the
3 form Qwest provided, and did not state to Qwest that North County refused to negotiate over
4 any document other than the old form of agreement.

5 7. A copy of my letter dated December 5, 2008 to Todd Lesser of North County is attached
6 marked as Attachment E. That letter was sent to extend the negotiation window to allow the
7 parties time to negotiate a new agreement, and identified the new period through which the
8 parties may file a petition seeking arbitration under Section 252(b) of the
9 Telecommunications Act. Mr. Lesser indicated his agreement with the extension by entering
10 his signature at the bottom of the letter over the word "concur."

11 8. Copies of five other documents containing Mr. Lesser's express concurrence that the
12 negotiation window should be extended, and agreement as to a revised period during which
13 either party could see arbitration under Section 252 of the Telecommunications Act, are
14 attached as Attachment F.

15 9. During much of the relevant time period North County had legal representation from the
16 national law firm Arent Fox. A copy of portions of Arent Fox's website describing their
17 expertise is attached as Attachment G.

18 10. The Arent Fox attorney working with North County was Michael Hazzard, from Washington,
19 D.C. A copy of an email exchange between Mr. Hazzard and myself is attached as
20 Attachment H. Mr. Hazzard stated during that interchange, "We're reviewing a bunch of
21 agreements to see if there is something that will work for us. My sense is that we will need a
22 few weeks, but we are willing to extend the arb deadline."

23 11. From the time Qwest initiated the negotiation until Qwest filed its Petition for Arbitration,
24 North County raised only one significant issue with the agreement language. Mr. Lesser
25 expressed a strong desire to continue MF signaling rather than SS7. Qwest proposed
26 language changes to the negotiation draft but North County did not accept the language. Mr.

1 Lesser also stated that he wanted assurances that the new agreement would not financially
2 impact North County, to which Nancy Donahue and I repeatedly replied that Qwest could not
3 speak to the financial impact to North County, since we were not involved with North
4 County's business. Ms. Donahue, other Qwest personnel and I did attempt to point out
5 certain instances where there could be a theoretical impact in good faith, while continuing to
6 request that North County review the document itself to assess any impacts to its business.
7 North County did not object to such requests or otherwise claim that it was unable to perform
8 such a review.

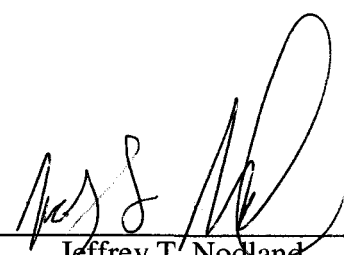
9 12. At the time Qwest filed its Petition for Arbitration, I was not made aware by North County of
10 any other areas of disagreement.

11 13. Contrary to the statement made in North County's Response to Qwest's Petition at page 9,
12 lines 9 through 16, I have no record that North County asked Qwest for written assurances
13 that Qwest's proposed agreement did not substantially change the rights of the parties from
14 the old agreement. As discussed above, North County did request assurances that it would
15 not be financially impacted by the proposed agreement, which Nancy Donahue and I stated
16 that Qwest could not do, since we played no part on North County's business. North County
17 never stated to Qwest that such a condition was a precondition to considering a new
18 agreement.

19 14. Of the current 90 Arizona wireline ICAs, Qwest has active, only five are not in the
20 SGAT/Template format, which we consider the current format. Those five are all in
21 negotiations.

22 15. Subsequent to Qwest's filing of Petition for Arbitration, continued discussions between the
23 parties revealed that the parties held different positions on what is known as the relative use
24 factor ("RUF"), which is used in assigning costs of jointly provided transport and application
25 of Qwest's proposed language dealing with VNXX traffic. North County had not raised that
26 point prior to the date of the Petition, so it was not mentioned at that time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



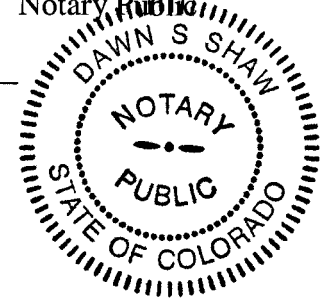
Jeffrey T. Nodland

SUBSCRIBED AND SWORN to before me this 28th day of April, 2009.



Notary Public

My Commission Expires: 2/7/12



ATTACHMENT A



Qwest Corporation
1801 California St., Suite 2400
Denver, Colorado 80202
Phone: 303-965-3887
Email: Nancy.Donahue@qwest.com
Nancy Donahue
Staff Advocate Policy & Law

July 2, 2008

Todd Lesser
North County Communications Corporation
3802 Rosecrans Street, Suite 485
San Diego, CA 92110

Re: Termination of Interconnection Agreements

Dear Mr. Lesser:

This letter provides formal notice to North County Communications Corporation ("North County") that Qwest Corporation ("Qwest") intends to terminate the existing Interconnection Agreements (ICAs) in the states of Arizona, Oregon and Washington. Qwest requests that, pursuant to Section 252(a) of the Telecommunications Act of 1996, North County undertake negotiations with Qwest for successor ICAs in the respective states.

Please review the following options that you may elect to obtain successor ICAs:

Option 1. Adopt the Multi-State Negotiation Interconnection Agreement (including Exhibits), Qwest's latest offering, which provides up to date terms and conditions including all the latest products that Qwest has made available and aligns with current operational processes. The Multi-State Negotiation Interconnection Agreement and the state specific Exhibits can be found at: <http://www.qwest.com/wholesale/clecs/sgatswireline.html>

Option 2. Adopt an existing recently approved state specific ICA of another CLEC. Upon your request, Steve Dea will provide a state specific list of ICAs that are available for adoption.

Option 3. The Multi-state Negotiations Interconnection Agreement template can be used as the basis to negotiate the terms and conditions for successor ICAs in the respective states. For purposes of negotiations, please review the electronic version of the Multi-State Negotiation Interconnection Agreement template and e-mail suggested revisions in a red-lined form directly to me at Nancy.Donahue@Qwest.com. Upon receipt of North County's red-line, we will schedule negotiation session to discuss North County's proposed modifications.

If we are unable to execute successor ICAs as set forth in the Federal Telecommunications Act of 1996 ("Act"), Qwest intends to ask the respective Commissions to arbitrate agreements pursuant to Section 251(b) of the Act. Based on the date of this notification letter, the arbitration window during which either party may file for arbitration commences on November 14, 2008 and ends on December 9, 2008, inclusive.

Please let me know which option North County would like to pursue for successor ICAs or contact me if you have any questions.

Sincerely yours,

Nancy J. Donahue

ATTACHMENT B



Qwest Corporation
1801 California St., Suite 2400
Denver, Colorado 80202
Phone: 303-965-3887
Email: Nancy.Donahue@qwest.com
Nancy Donahue
Staff Advocate Policy & Law

August 8, 2008

Todd Lesser
North County Communications Corporation
3802 Rosecrans Street, Suite 485
San Diego, CA 92110

Re: Termination of Interconnection Agreements

Dear Mr. Lesser:

On July 2, 2008 Qwest provided formal notice to North County Communications Corporation ("North County") that Qwest Corporation ("Qwest") intends to terminate the existing Interconnection Agreements (ICAs) in the states of Arizona, Oregon and Washington and requested that, pursuant to Section 252(a) of the Telecommunications Act of 1996, North County undertake negotiations with Qwest for successor ICAs in the respective states. In addition, Qwest provided 3 options that North County may elect to obtain successor ICAs.

Qwest believes both that it is in the best interest of both parties to begin good faith negotiations for new ICAs for the states of Arizona, Oregon and Washington and that North County is required to engage in those good faith negotiations under applicable law.

As indicated in Qwest's July 2, 2008 notification letter, if we are unable to execute successor ICAs as set forth in the Federal Telecommunications Act of 1996 ("Act"), Qwest intends to ask the respective Commissions to arbitrate agreements pursuant to Section 251(b) of the Act. As indicated previously, the arbitration window during which either party may file for arbitration commences on November 14, 2008 and ends on December 9, 2008, inclusive.

To date, Qwest has not received any response from North County; please contact me and let me know how North County would like to proceed.

Sincerely yours,

Nancy J. Donahue

ATTACHMENT C

Curtright, Norm

From: Todd Lesser [todd@nccom.com]
Sent: Thursday, August 07, 2008 8:30 PM
To: Donahue, Nancy
Subject: Re: North County Communications Corporation ("North County")

I am a little confused. We just assigned these interconnection agreements to the different NCC entities in each state and made modifications to them that Qwest requested.

We were working with Andrew Creighton and Larry Christensen.

Are you requesting to cancelling the old agreements or the new one we just signed a month or so ago?

I hope all is well.

Todd

On 2008-08-07 at 15:51, Donahue, Nancy (Nancy.Donahue@qwest.com) wrote:

> Mr. Lesser:
>
>
> The attached letter will be sent today via overnite delivery as well.

> I will look forward to hearing from you soon.

> Regards,

> Nancy J. Donahue
> Staff Advocate Policy & Law
> 1801 California
> Suite 2410
> Denver, CO 80202-1984
> (303) 965-3887

> NOTICE: This communication is the property of Qwest and may contain
> privileged or confidential information. Unauthorized use of this
> communication is strictly prohibited and may be unlawful. If you have
> received this communication in error, please immediately notify the
> sender by reply email and destroy all copies of the communication and
> any attachments. Thank you.

> This communication is the property of Qwest and may contain
> confidential or privileged information. Unauthorized use of this
> communication is strictly prohibited and may be unlawful. If you have
> received this communication in error, please immediately notify the
> sender by reply e-mail and destroy all copies of the communication and
> any attachments.

--

Todd Lesser
Voice: +1 619 364 4750 Fax: +1 619 364 4777
E-Mail: todd@nccom.com

Curtright, Norm

From: Donahue, Nancy
Sent: Wednesday, August 13, 2008 7:57 AM
To: Todd Lesser
Subject: RE: North County Communications Corporation ("North County")

Todd:

Thank you for your message. As you have indicated, North County's Interconnection Agreements (ICAs) were assigned to different NCC entities; however, new ICAs were not negotiated. North County signed amendments to the existing ICAs (Arizona, Oregon and Washington) implementing the FCC's Triennial Review Order and Triennial Review Remand Order.

The ICAs that North County adopted in 1997 pre-date 1997 and it is appropriate to negotiate new ICAs in the respective states. In addition to the substantial changes in law that have occurred in the intervening period, working with an out of date document creates potential inconsistencies with existing implementation processes which create exceptions and a manual mode that drives cost and inefficiencies. The Multi-State Negotiation ICA found at: <http://www.qwest.com/wholesale/clecs/sgatswireline.html>, provided previously, is regularly updated, reflects current applicable law, contains our latest products/services and aligns with the respective improved processes for implementation as they exist today.

The July 2, 2008 letter served as formal notice to North County that Qwest intends to terminate the existing ICAs in the states of Arizona, Oregon and Washington; and, Qwest requested that, pursuant to Section 252(a) of the Telecommunications Act of 1996, North County undertake negotiations with Qwest for successor ICAs in the respective states. The arbitration window during which either party may file for arbitration commences on November 14, 2008 and ends on December 9, 2008, inclusive.

Please let me know if you would like me to propose some dates/times for us to discuss the options that North County may elect to obtain successor ICAs.

Regards,

Nancy

Nancy J. Donahue
Staff Advocate Policy & Law
1801 California
Suite 2410
Denver, CO 80202-1984
(303) 965-3887

NOTICE: This communication is the property of Qwest and may contain privileged or confidential information. Unauthorized use of this communication is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately notify the sender by reply email and destroy all copies of the communication and any attachments. Thank you.

-----Original Message-----

From: Todd Lesser [mailto:todd@nccom.com]
Sent: Thursday, August 07, 2008 9:30 PM

4/13/2010

To: Donahue, Nancy
Subject: Re: North County Communications Corporation ("North County")

I am a little confused. We just assigned these interconnection agreements to the different NCC entities in each state and made modifications to them that Qwest requested.

We were working with Andrew Creighton and Larry Christensen.

Are you requesting to cancelling the old agreements or the new one we just signed a month or so ago?

I hope all is well.

Todd

On 2008-08-07 at 15:51, Donahue, Nancy (Nancy.Donahue@qwest.com) wrote:

> Mr. Lesser:

>

>

> The attached letter will be sent today via overnite delivery as well.

>

>

> I will look forward to hearing from you soon.

>

>

> Regards,

>

>

> Nancy J. Donahue
> Staff Advocate Policy & Law
> 1801 California
> Suite 2410
> Denver, CO 80202-1984
> (303) 965-3887

>

>

> NOTICE: This communication is the property of Qwest and may contain
> privileged or confidential information. Unauthorized use of this
> communication is strictly prohibited and may be unlawful. If you have
> received this communication in error, please immediately notify the
> sender by reply email and destroy all copies of the communication and
> any attachments. Thank you.

>

>

> This communication is the property of Qwest and may contain
> confidential or privileged information. Unauthorized use of this
> communication is strictly prohibited and may be unlawful. If you have
> received this communication in error, please immediately notify the
> sender by reply e-mail and destroy all copies of the communication and
> any attachments.

--

Todd Lesser
Voice: +1 619 364 4750 Fax: +1 619 364 4777
E-Mail: todd@nccom.com

4/13/2010

ATTACHMENT D

Curtright, Norm

From: Donahue, Nancy
Sent: Friday, September 12, 2008 3:53 PM
To: 'Todd Lesser'
Subject: RE: North County Communications Corporation ("North County")
Attachments: Negotiation-Template-6-23-08-.doc

Todd:

As you know, my July 2, 2008 letter served as formal notice to North County that Qwest intends to terminate the existing Interconnection Agreements (ICAs) in the states of Arizona, Oregon and Washington; and, Qwest requested that, pursuant to Section 252(a) of the Telecommunications Act of 1996, North County undertake negotiations with Qwest for successor ICAs in the respective states.

Given that the arbitration window opens on November 14, 2008 and closes on December 9, 2008, Qwest believes that it is in both parties best interest to move forward the negotiations for successor ICAs in the respective states.

I have attached the Multi-State Negotiation ICA from the Qwest website used to negotiate the terms and conditions for new ICAs. For purposes of negotiations, please review the electronic version of the Multi-State Negotiation ICA and e-mail suggested revisions in a red-lined form directly to me at Nancy.Donahue@Qwest.com. If necessary, we can schedule one or more negotiation sessions to discuss North County's proposed modifications.

Again, if we are unable to execute successor ICAs as set forth in the Federal Telecommunications Act of 1996 ("Act"), Qwest intends to ask the respective Commissions to arbitrate agreements pursuant to Section 251(b) of the Act.

I look forward to hearing from you soon.

Regards,

Nancy

Nancy J. Donahue
Staff Advocate Policy & Law
1801 California
Suite 2410
Denver, CO 80202-1984
(303) 965-3887

NOTICE: This communication is the property of Qwest and may contain privileged or confidential information. Unauthorized use of this communication is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately notify the sender by reply email and destroy all copies of the communication and any attachments. Thank you.

From: Donahue, Nancy

4/13/2010

Sent: Wednesday, August 13, 2008 8:57 AM
To: 'Todd Lesser'
Subject: RE: North County Communications Corporation ("North County")

Todd:

Thank you for your message. As you have indicated, North County's Interconnection Agreements (ICAs) were assigned to different NCC entities; however, new ICAs were not negotiated. North County signed amendments to the existing ICAs (Arizona, Oregon and Washington) implementing the FCC's Triennial Review Order and Triennial Review Remand Order.

The ICAs that North County adopted in 1997 pre-date 1997 and it is appropriate to negotiate new ICAs in the respective states. In addition to the substantial changes in law that have occurred in the intervening period, working with an out of date document creates potential inconsistencies with existing implementation processes which create exceptions and a manual mode that drives cost and inefficiencies. The Multi-State Negotiation ICA found at: <http://www.qwest.com/wholesale/clecs/sgatswireline.html>, provided previously, is regularly updated, reflects current applicable law, contains our latest products/services and aligns with the respective improved processes for implementation as they exist today.

The July 2, 2008 letter served as formal notice to North County that Qwest intends to terminate the existing ICAs in the states of Arizona, Oregon and Washington; and, Qwest requested that, pursuant to Section 252(a) of the Telecommunications Act of 1996, North County undertake negotiations with Qwest for successor ICAs in the respective states. The arbitration window during which either party may file for arbitration commences on November 14, 2008 and ends on December 9, 2008, inclusive.

Please let me know if you would like me to propose some dates/times for us to discuss the options that North County may elect to obtain successor ICAs.

Regards,

Nancy

Nancy J. Donahue
Staff Advocate Policy & Law
1801 California
Suite 2410
Denver, CO 80202-1984
(303) 965-3887

NOTICE: This communication is the property of Qwest and may contain privileged or confidential information. Unauthorized use of this communication is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately notify the sender by reply email and destroy all copies of the communication and any attachments. Thank you.

-----Original Message-----

From: Todd Lesser [mailto:todd@nccom.com]
Sent: Thursday, August 07, 2008 9:30 PM
To: Donahue, Nancy
Subject: Re: North County Communications Corporation ("North County")

I am a little confused. We just assigned these interconnection agreements to the different NCC entities in each state and made modifications to them that Qwest requested.

4/13/2010

We were working with Andrew Creighton and Larry Christensen.

Are you requesting to cancelling the old agreements or the new one we just signed a month or so ago?

I hope all is well.

Todd

On 2008-08-07 at 15:51, Donahue, Nancy (Nancy.Donahue@qwest.com) wrote:

> Mr. Lesser:

>

>

> The attached letter will be sent today via overnite delivery as well.

>

>

> I will look forward to hearing from you soon.

>

>

> Regards,

>

>

> Nancy J. Donahue
> Staff Advocate Policy & Law
> 1801 California
> Suite 2410
> Denver, CO 80202-1984
> (303) 965-3887

>

>

> NOTICE: This communication is the property of Qwest and may contain
> privileged or confidential information. Unauthorized use of this
> communication is strictly prohibited and may be unlawful. If you have
> received this communication in error, please immediately notify the
> sender by reply email and destroy all copies of the communication and
> any attachments. Thank you.

>

>

> This communication is the property of Qwest and may contain
> confidential or privileged information. Unauthorized use of this
> communication is strictly prohibited and may be unlawful. If you have
> received this communication in error, please immediately notify the
> sender by reply e-mail and destroy all copies of the communication and
> any attachments.

--

Todd Lesser

Voice: +1 619 364 4750

Fax: +1 619 364 4777

E-Mail: todd@nccom.com

4/13/2010

ATTACHMENT E



Spirit of Service Jeffrey T. Nodland

Corporate Counsel
Suite 1000
1801 California Street
Denver, Colorado 80202
303-383-6657
jeff.nodland@qwest.com

December 5, 2008

Via Email

Todd Lesser
North County Communications Corporation
3802 Rosecrans Street, Suite 485
San Diego, CA 92110

**Re: Negotiation of an Interconnection Agreement Between North County
Communications Corporation and Qwest Communications:**

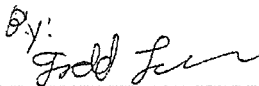
Dear Mr. Lesser:

I am writing on behalf of Qwest Communications ("Qwest") concerning the negotiations of a new interconnection agreement between North County and Qwest.

This letter offers to extend the negotiation's window for a period of fifty-two (52) days to allow the parties time to negotiate a new agreements in Arizona, Oregon and Washington. The new period through which the parties may file a petition seeking arbitration under Section 252(b) of the 1996 Telecommunications Act shall be January 5 through January 30, 2009, inclusive. If you concur with this extension please sign below and fax to me a copy at 303-383-8553.

Best regards,

Jeffrey T. Nodland

By: 

Concur

ATTACHMENT F



Qwest Corporation
1801 California St., Suite 2400
Denver, Colorado 80202
Phone: 303-965-3887
Fax: 303-965-3527
Email: Nancy.Donahue@qwest.com

Nancy Donahue
Staff Advocate Policy & Law

January 16, 2009

Todd Lesser
North County Communications Corporation
3802 Rosecrans Street, Suite 485
San Diego, CA 92110

Dear Mr. Lesser:

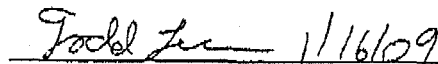
On behalf of Qwest, I am writing to memorialize the understanding our companies have reached regarding the timetable for negotiating Interconnection Agreements between Qwest Corporation ("Qwest") and North County Communications Corporation for the states of Arizona, Oregon and Washington., respectively.

The parties agree that for the purpose of determining the relevant dates for the arbitration window as set forth in the Federal Telecommunications Act of 1996 ("Act"), the period during which either party may file for arbitration under section 252 (b) (1) of the Act commences on January 19, 2009 and ends on February 13, 2009, inclusive.

If the foregoing does not comport with your understanding, then please contact me as soon as possible at Nancy.Donahue@Qwest.com. Otherwise, please execute this letter in the space provided below agreeing to the above set forth timeframes and e-mail a signed copy of this letter to me or fax a signed copy of this letter to my attention at (303) 965-3527.

Sincerely,

Nancy J. Donahue

 1/16/09
Agreed for North County Communications Corporation



Qwest Corporation
1801 California St., Suite 2400
Denver, Colorado 80202
Phone: 303-965-3887
Fax: 303-965-3527
Email: Nancy.Donahue@qwest.com

Nancy Donahue
Staff Advocate Policy & Law

February 9, 2009

Todd Lesser
North County Communications Corporation
3802 Rosecrans Street, Suite 485
San Diego, CA 92110

Dear Mr. Lesser:

On behalf of Qwest, I am writing to memorialize the understanding our companies have reached regarding the timetable for negotiating Interconnection Agreements between Qwest Corporation ("Qwest") and North County Communications Corporation for the states of Arizona, Oregon and Washington., respectively.

The parties agree that for the purpose of determining the relevant dates for the arbitration window as set forth in the Federal Telecommunications Act of 1996 ("Act"), the period during which either party may file for arbitration under section 252 (b) (1) of the Act commences on February 19, 2009 and ends on March 16, 2009, inclusive.

If the foregoing does not comport with your understanding, then please contact me as soon as possible at Nancy.Donahue@Qwest.com. Otherwise, please execute this letter in the space provided below agreeing to the above set forth timeframes and e-mail a signed copy of this letter to me or fax a signed copy of this letter to my attention at (303) 965-3527.

Sincerely,

Nancy J. Donahue

Agreed for North County Communications Corporation

By: *Todd Lesser*
2/13/09



Nancy Donahue
Staff Advocate Policy & Law
Qwest Corporation
1801 California Street, 24th Floor
Denver, CO 80202
(303) 965-3887
Nancy.Donahue@Qwest.com

April 29, 2009

Todd Lesser
North County Communications Corporation
3802 Rosecrans Street, Suite 485
San Diego, CA 92110

Dear Mr. Lesser:

On behalf of Qwest, I am writing to memorialize the understanding our companies have reached regarding the timetable for negotiating Interconnection Agreements between Qwest Corporation ("Qwest") and North County Communications Corporation for the states of Arizona, Oregon and Washington., respectively.

The parties agree that for the purpose of determining the relevant dates for the arbitration window as set forth in the Federal Telecommunications Act of 1996 ("Act"), the period during which either party may file for arbitration under section 252 (b) (1) of the Act commences on May 7, 2009 and ends on June 1, 2009, inclusive.

If the foregoing does not comport with your understanding, then please contact me as soon as possible at Nancy.Donahue@Qwest.com. Otherwise, please execute this letter in the space provided below agreeing to the above set forth timeframes and e-mail a signed copy of this letter to me or fax a signed copy of this letter to my attention at (303) 965-3527.

Sincerely,

Nancy J. Donahue

By: Todd Lesser
Agreed for North County Communications Corporation of Arizona
" " " " of Oregon
" " " " of Washington



Nancy Donahue
Staff Advocate Policy & Law
Qwest Corporation
1801 California Street, 24th Floor
Denver, CO 80202
(303) 965-3887
Nancy.Donahue@Qwest.com

May 29, 2009

Todd Lesser
North County Communications Corporation
3802 Rosecrans Street, Suite 485
San Diego, CA 92110

Dear Mr. Lesser:

On behalf of Qwest, I am writing to memorialize the understanding our companies have reached regarding the timetable for negotiating Interconnection Agreements between Qwest Corporation ("Qwest") and North County Communications Corporation for the states of Arizona, Oregon and Washington., respectively.

The parties agree that for the purpose of determining the relevant dates for the arbitration window as set forth in the Federal Telecommunications Act of 1996 ("Act"), the period during which either party may file for arbitration under section 252 (b) (1) of the Act commences on June 6, 2009 and ends on July 1, 2009, inclusive.

If the foregoing does not comport with your understanding, then please contact me as soon as possible at Nancy.Donahue@Qwest.com. Otherwise, please execute this letter in the space provided below agreeing to the above set forth timeframes and e-mail a signed copy of this letter to me or fax a signed copy of this letter to my attention at (303) 965-3527.

Sincerely,

Nancy J. Donahue



Agreed for North County Communications Corporation



Nancy Donahue
Staff Advocate Policy & Law
Qwest Corporation
1801 California Street, 24th Floor
Denver, CO 80202
(303) 965-3887
Nancy.Donahue@Qwest.com

May 29, 2009

Todd Lesser
North County Communications Corporation
3802 Rosecrans Street, Suite 485
San Diego, CA 92110

Dear Mr. Lesser:

On behalf of Qwest, I am writing to memorialize the understanding our companies have reached regarding the timetable for negotiating Interconnection Agreements between Qwest Corporation ("Qwest") and North County Communications Corporation for the states of Arizona, Oregon and Washington., respectively.

The parties agree that for the purpose of determining the relevant dates for the arbitration window as set forth in the Federal Telecommunications Act of 1996 ("Act"), the period during which either party may file for arbitration under section 252 (b) (1) of the Act commences on June 6, 2009 and ends on July 1, 2009, inclusive.

If the foregoing does not comport with your understanding, then please contact me as soon as possible at Nancy.Donahue@Qwest.com. Otherwise, please execute this letter in the space provided below agreeing to the above set forth timeframes and e-mail a signed copy of this letter to me or fax a signed copy of this letter to my attention at (303) 965-3527.

Sincerely,

Nancy J. Donahue



Agreed for North County Communications Corporation

Curtright, Norm

From: Todd Lesser [todd@nccom.com]
Sent: Thursday, June 25, 2009 9:14 PM
To: Nodland, Jeff
Cc: Donahue, Nancy; 'Hazzard, Michael'
Subject: Re: North County (Arizona, Oregon and Washington) ArbitrationWindow Extension

I am out of the country for another ten days. Please consider this e-mail as NCC acceptance of the extension. As soon as I get back, I will sign it and send it back.

On 2009-06-25 at 14:04, Nodland, Jeff (jjeff.nodland@qwest.com) wrote:

> Michael & Todd:

> Unfortunately, we have come to the end of another window and we need to
> extend the window. It is my hope that this is the last such extension
> needed. Please execute this and get it back to Nancy and I. Also,
> please get back to us on our proposal. Thanks.

> Jeff

> Jeffrey T. Nodland
> 303-383-6657

> NOTICE: This e-mail message is for the sole review and use of the
> intended recipient(s) and may contain confidential and privileged
> information. Any unauthorized review, use, disclosure, transmission or
> distribution is prohibited. If you are not the intended recipient,
> please inform the sender by reply e-mail and destroy all copies of the
> original message.

> From: Donahue, Nancy
> Sent: Wednesday, April 29, 2009 8:45 AM
> To: 'Hazzard, Michael'; 'todd@nccom.com'
> Cc: Nodland, Jeff
> Subject: RE: North County (Arizona, Oregon and Washington) Arbitration
> Window Extension

> Hi Mike,

> I am sure that Todd will sign and return the arbitration window
> extension letter as we have done in the past and this will give you
> some additional time to decide how North County would like to proceed.

> Hi Todd:

> It would be helpful if you were able to execute the arbitration window
> extension letter in the space provided and scan a signed copy and send
> to me via e-mail today.

ATTACHMENT G



Telecommunications

Overview

In the constantly evolving world of communications, staying ahead of the curve is crucial to remaining competitive. The Arent Fox telecommunications group provides innovative solutions. Our team constantly updates its knowledge of both legal and technological changes in these fields in order to provide you with a full and complete range of services.

Our group is quick, smart, and strategic. Our goal for every client is to provide customized counseling and assistance as efficiently as possible. We will share your vision for success and eliminate roadblocks that can hinder your growth and drain your time away from your core business.

We offer a complete range of services in this field covering each aspect of your communications business — transactions, licensing, regulatory compliance and advocacy, and litigation — focusing on the following areas:

- Communications regulation
- Litigation
- Privacy

We serve clients ranging from well-established international telecommunications corporations to emerging entrepreneurs. Our clients include telecommunications carriers, wireless service providers, Voice over Internet Protocol (VoIP) service providers, cable companies, mobile contract providers, radio and television broadcasters, satellite operators, equipment manufacturers, and Internet Service Providers. We also assist large users of communications services with their procurement needs, as well as venture capital firms, investment banks and other investors in the communications industry.

Arent Fox is committed to building the right team for addressing each client's needs. Our group regularly works cooperatively with attorneys in other areas of the firm to accomplish your goals, including:

- Government Relations Group, which includes two former US senators, a former Congressman, the former Mayor of the District of Columbia, a former member of the US House of Representatives, and a former member of the board of directors of the Export-Import Bank of the United States. Additionally, we have attorneys and professionals with extensive and recent experience in senior positions on Capitol Hill, in the executive branch and in the political arena.
- Privacy and Data Protection Team, which is comprised of attorneys with extensive experience in data security, consumer privacy, and policy advocacy. Many attorneys in the telecommunications group also serve on this team.
- Litigation Group, which complements our group's experience in all types of adversarial proceedings, from federal lawsuits to alternative dispute resolution.

Telecommunications

Whether you are a domestic telecommunications company or an international business operating in the US market, Arent Fox's full-service telecommunications practice can help you achieve your business goals. Our attorneys have extensive experience working with traditional telecommunications companies as well as cellular companies and Internet Service Providers.

Our experience includes:

- Litigating disputes between carriers before federal and state courts, the Federal Communications Commission (FCC), and state public service commissions
- Challenging orders of State Commissions and the FCC in appellate courts, including mandamus petitions under the All Writs Act
- Representing clients in FCC rulemakings
- Assisting clients with local exchange competition
- Negotiating and arbitrating interconnection agreements
- Drafting and negotiating antenna licensing and in-building wireless agreements
- Negotiating and transacting mergers and acquisitions on behalf of telecommunications providers
- Assisting with regulatory compliance, including universal service, annual regulatory fees, E911, Communications Assistance for Law Enforcement Act (CALEA), and access charges, among other issues
- Addressing federal and state jurisdictional and preemption issues
- Advising international carriers (and their affiliates) on conducting business in the United States
- Advising carriers on state entry and regulatory requirements
- Assisting equipment manufacturers with federal regulatory compliance (such as "Part 65" rules)
- Counseling and assisting with end user privacy issues

Our nationally known telecommunications attorneys have served as appellate and trial counsel in a diverse array of telecommunications matters. Our attorneys have acted as lead appellate counsel before the federal courts of appeals and lead trial counsel in a variety of federal and state judicial and administrative proceedings. We have represented carriers in breach of contract actions in federal and state courts, and we have substantial experience litigating formal and informal complaints before the FCC and state public service commissions. Our experience has given us the technological understanding, policy experience, and litigation tools to provide comprehensive counsel and advocacy in virtually any litigation forum that your company may need.

Homeland security and law enforcement compliance also are increasingly important issues for telecommunications companies. When these matters arise, we can address wire tapping regulations, information retention policies and network security concerns. Our goal is to help our clients comply with all security laws while still protecting the security of private customer records.

Our work in this field extends to representing both foreign telecommunications companies in the US market as well as representing American telecommunications providers in international matters. We strive to help companies find business opportunities.

In addition to traditional telecommunications companies, we represent clients deploying emerging technologies, such as Voice over Internet, WiFi and WiMax.

We assist clients with legal matters pertaining to a wide variety of wireless services including:

- Cellular telephone
- Point-to-point microwave
- Multichannel Video Distribution and Data Service (MVDDS)
- Paging services
- Wireless Communications Service (WCS)
- Digital Electronic Message Service (DEMS)
- Local Multipoint Distribution Service (LMDS)

Privacy

The content explosion on the Internet as a tool for commerce and personal networking carries with it an increased risk to consumers of fraud and information misuse. We expect heightened regulatory scrutiny of utility companies, mobile marketing activities Internet content and e-commerce transactions, particularly in the areas of consumer protection of privacy. Let the privacy and data protection team help you navigate these wide waters of Internet and privacy regulation.

Subscriber privacy is one key area of increasing concern for communications providers, as high-profile customer data breaches have cost businesses in other fields millions of dollars. Given the amount of customer data communications companies must keep on file, they must be particularly concerned about information security.

We can help you understand and comply with the many statutes and regulations mandating protection of subscriber information, including the CPNI rules, the CAN-SPAM Act, the Telecommunications Consumer Protection Act, and the Gramm-Leach-Bliley Act.

Our privacy services focus on more than just compliance. We take a strategic approach to privacy planning. Arent Fox has extensive experience in helping companies draft and execute policies and procedures to help ensure data privacy, while still allowing you to collect the information you need.

Our experience includes:

- Policy advocacy in legislatures and agencies at the state and federal level
- Crafting appropriate privacy policies and best practices
- Addressing data breaches
- Compliance with privacy-related regulatory requirements

Our attorneys in the telecommunications group regularly appear at conferences and industry events related to privacy regulation. In addition, we regularly publish an electronic privacy alert that includes discussion of upcoming privacy regulation and provides notice of important compliance deadlines in the various federal and state privacy regimes.

© 2009 ARENT FOX LLP

Contents may contain attorney advertising under the laws of some states.
Prior results do not guarantee a similar outcome.

ATTACHMENT H

>
>
> -----Original Message-----
> From: Todd Lesser [mailto:todd@nccom.com]
> Sent: Wednesday, April 15, 2009 2:21 PM
> To: Nodland, Jeff
> Cc: Donahue, Nancy
> Subject: Re: North County (Arizona, Oregon and Washington)
> ArbitrationWindow Extension and Language Proposal for
> InterconnectionNegotiations
>
> On 2009-04-15 at 14:02, Nodland, Jeff (jeff.nodland@qwest.com) wrote:
>
>> Todd:
>>
>>
>>
>>
>> Can you please let us know where we are at? I just wanted to make sure

>> we can continue to move to finish this off, thanks so much.
>
>
> Attached is the signature page. I sent the agreement off to our
> attorney. He was away for the holiday and only started reviewing it
> this week.

—
Todd Lesser
Voice: +1 619 364 4750 Fax: +1 619 364 4777
E-Mail: todd@nccom.com

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

-----Original Message-----

From: Todd Lesser [mailto:todd@nccom.com]

Sent: Thursday, April 23, 2009 2:46 PM

To: Nodland, Jeff

Cc: Donahue, Nancy; Hazzard, Michael

Subject: Re: North County (Arizona, Oregon and Washington) Arbitration Window Extension and Language Proposal for Interconnection Negotiations

We must be on the same clock. Four minutes ago I sent an e-mail off to Mike Hazzard.

I have included him on this e-mail list.

On 2009-04-23 at 14:44, Nodland, Jeff (jeff.nodland@qwest.com) wrote:

> Todd:

>

> Just wanted to check. Any update? Hopefully we can close this off. Thanks.

>

> Jeff

>

>

> Jeffrey T. Nodland

> 303-383-6657

>

> NOTICE: This e-mail message is for the sole review and use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, transmission or distribution is prohibited. If you are not the intended recipient, please inform the sender by reply e-mail and destroy all copies of the original message.

>

>

----- Original Message -----

From: Nodland, Jeff <jeff.nodland@qwest.com>

To: 'Todd Lesser' <todd@nccom.com>

Cc: Donahue, Nancy <Nancy.Donahue@qwest.com>; Hazzard, Michael

Sent: Thu Apr 23 16:48:10 2009

Subject: RE: North County (Arizona, Oregon and Washington) Arbitration Window Extension and Language Proposal for Interconnection Negotiations

Thanks much, I really appreciate it!!

Jeff

Jeffrey T. Nodland
303-383-6657

NOTICE: This e-mail message is for the sole review and use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, transmission or distribution is prohibited. If you are not the intended recipient, please inform the sender by reply e-mail and destroy all copies of the original message.

-----Original Message-----

From: Hazzard, Michael [mailto:Hazzard.Michael@ARENTFOX.COM]

Sent: Thursday, April 23, 2009 2:52 PM

To: Nodland, Jeff; 'todd@nccom.com'

Cc: Donahue, Nancy

Subject: Re: North County (Arizona, Oregon and Washington) Arbitration Window Extension and Language Proposal for Interconnection Negotiations

Hi Jeff,

We're reviewing a bunch of agreements to see if there is something that will work for us. My sense is that we will need a few weeks, but we are willing to extend the arb deadline.

Thanks,

Mike

----- Original Message -----

From: Nodland, Jeff <jeff.nodland@qwest.com>

To: Hazzard, Michael; 'todd@nccom.com' <todd@nccom.com>

Cc: Donahue, Nancy <Nancy.Donahue@qwest.com>

Sent: Thu Apr 23 16:53:27 2009

Subject: RE: North County (Arizona, Oregon and Washington) Arbitration Window Extension and Language Proposal for Interconnection Negotiations

Are you looking for an opt-in or the language we proposed? We proposed the language, which is very different from any other ICA, because Todd has expressed the strong desire to continue with MF signaling. Any other ICA would have the requirement of SS7. Just wanted you to know, I am happy to discuss. Thanks.

Jeff

Jeffrey T. Nodland
303-383-6657

NOTICE: This e-mail message is for the sole review and use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, transmission or distribution is prohibited. If you are not the intended recipient, please inform the sender by reply e-mail and destroy all copies of the original message.

-----Original Message-----

From: Hazzard, Michael [mailto:Hazzard.Michael@ARENTFOX.COM]

Sent: Thursday, April 23, 2009 3:11 PM

To: Nodland, Jeff; 'todd@nccom.com'

Cc: Donahue, Nancy

Subject: Re: North County (Arizona, Oregon and Washington) Arbitration Window Extension and Language Proposal for Interconnection Negotiations

Actually, both. We do need MF, but if there are no other agreements with it, let me know.

----- Original Message -----

From: Nodland, Jeff <jeff.nodland@qwest.com>

To: Hazzard, Michael; 'todd@nccom.com' <todd@nccom.com>

Cc: Donahue, Nancy <Nancy.Donahue@qwest.com>

Sent: Thu Apr 23 17:29:21 2009

Subject: RE: North County (Arizona, Oregon and Washington) Arbitration Window Extension and Language Proposal for Interconnection Negotiations

I do not believe that there are any whatsoever, as it is my understanding that NCC is that last interconnecting CLEC with Qwest that still uses MF. Thanks again.

Jeff

Jeffrey T. Nodland
303-383-6657

NOTICE: This e-mail message is for the sole review and use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, transmission or distribution is prohibited. If you are not the intended recipient, please inform the sender by reply e-mail and destroy all copies of the original message.

EXHIBIT C

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

2008 JAN 31 P 4:52

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JAN 31 2008

DOCKETED BY

ne

IN THE MATTER OF QWEST CORPORATION'S
PETITION FOR ARBITRATION AND APPROVAL
OF AMENDMENT TO INTERCONNECTION
AGREEMENT WITH ARIZONA DIALTONE, INC.
PURSUANT TO SECTION 252(b) OF THE
COMMUNICATIONS ACT OF 1934, AS
AMENDED BY THE TELECOMMUNICATIONS
ACT OF 1996 AND APPLICABLE STATE LAWS.

DOCKET NO. T-01051B-07-0693

DOCKET NO. T-03608A-07-0693

PROCEDURAL ORDER

BY THE COMMISSION:

On December 17, 2007, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration under 47 U.S.C. § 252(b) and Arizona Administrative Code ("A.A.C.") R14-2-1505 ("Petition"). In its Petition, Qwest requested that the Commission resolve issues related to the Interconnection Agreement ("ICA") between Qwest and Arizona Dialtone, Inc. ("Arizona Dialtone"). According to Qwest, the issues derive from Arizona Dialtone's refusal to enter into an amendment to the current ICA ("ICA Amendment") that would implement changes related to unbundled access to mass market local circuit switching, changes that Qwest asserts are mandated by federal law, specifically the Federal Communications Commission's ("FCC's") Triennial Review Remand Order¹ ("TRRO") and 47 C.F.R. § 51.319(d). Qwest asserts that Arizona Dialtone has refused to transition its UNE-P services as required by the TRRO and federal regulations and has refused to enter into the ICA Amendment to implement TRRO-mandated changes. Qwest asks that the Commission arbitrate each disputed issue included in its Petition, resolve each issue in Qwest's favor, find that its proposed ICA Amendment is consistent with the applicable law, issue an order adopting its ICA Amendment, and grant such other relief as is fair and justified.

¹ *In re Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 F.C.C.R. 2533 (2005)(Order on Remand).

1 Also on December 17, 2007, Qwest filed a Complaint against Arizona Dialtone, requesting
2 that the Commission (1) declare that the ICA requires Arizona Dialtone to compensate Qwest at the
3 transitional rate for UNE-P PAL and POTS for embedded services for a one-year transition period
4 that began March 11, 2005, and at the rate for alternative services for new orders thereafter; (2)
5 compel Arizona Dialtone to pay such charges to Qwest; (3) compel Arizona Dialtone to pay late
6 payment charges on the amounts ordered to be paid; (4) compel Arizona Dialtone to execute the ICA
7 Amendment and to comply with its obligations thereunder; and (5) award such other relief, including
8 but not limited to appropriate fines or penalties, as the Commission deems just and reasonable.²

9 A joint procedural conference for the Arbitration matter and the Complaint matter was held
10 on January 14, 2008, at the Commission's offices in Phoenix, Arizona. Qwest and Arizona Dialtone
11 each appeared through counsel. Staff did not appear. Because it was Qwest, an incumbent local
12 exchange carrier ("ILEC"), rather than Arizona Dialtone, a competitive local exchange carrier
13 ("CLEC") that requested negotiation in the Arbitration matter, and 47 U.S.C. § 252(b)(1) allows a
14 party to a negotiation to petition for arbitration within a specified period after an ILEC receives a
15 request for negotiation, Qwest and Arizona Dialtone were both asked to state their positions on (1)
16 Qwest's authority to petition for arbitration under 47 U.S.C. § 252 and (2) the applicability of the 47
17 U.S.C. § 252 timelines. As a full discussion of these issues was not possible at the procedural
18 conference, Qwest and Arizona Dialtone were directed to file briefs on those issues by January 28,
19 2008.

20 Also at the procedural conference, Qwest and Arizona Dialtone were asked to state their
21 positions on consolidating the Arbitration matter and the Complaint matter. Neither Qwest nor
22 Arizona Dialtone objected to consolidating the two matters. The issue of consolidation was taken
23 under advisement.

24 In light of the issue regarding Qwest's authority to petition for arbitration under 47 U.S.C. §
25 252, Qwest and Arizona Dialtone were also asked whether they objected to suspending the timelines
26 under 47 U.S.C. § 252, assuming that they apply. Qwest objected to a suspension of the timelines,
27

28 ² The Complaint matter was assigned Docket No. T-03608A-07-0694 et al.

1 while Arizona Dialtone did not. As a result of Qwest's objection, the hearing in the Arbitration
2 matter was tentatively scheduled for February 11, 2008. Counsel for Qwest and Arizona Dialtone
3 indicated that this date appeared to be acceptable, and counsel for Qwest was instructed to make a
4 filing as soon as possible if that should prove to be incorrect upon further inquiry. Counsel for Qwest
5 was also instructed that requesting a different hearing date would likely result in suspension of the 47
6 U.S.C. § 252 timelines.

7 On January 16, 2008, a Procedural Order was issued directing Qwest and Arizona Dialtone to
8 file the briefs discussed at the procedural conference. Staff was also requested to file such a brief.
9 The Procedural Order also scheduled a hearing in the Arbitration matter to commence on February
10 11, 2008; requested Staff to appear and participate in the hearing; and directed Qwest and Arizona
11 Dialtone to share equally the costs for transcription, including expedited transcripts, if the hearing
12 were to go forward on the Arbitration matter alone or on both matters, if consolidated. The issue of
13 consolidation was not decided, pending resolution of the issues concerning Qwest's authority to
14 petition for arbitration under 47 U.S.C. § 252 and the applicability of the 47 U.S.C. § 252 timelines.

15 On January 17, 2008,³ Arizona Dialtone filed its response to Qwest's Petition. In its response,
16 Arizona Dialtone did not object to or dispute the bulk of Qwest's Petition. However, Arizona
17 Dialtone asserted that, in addition to the issues raised by Qwest, the Arbitration matter should resolve
18 the "true up" of rates sought by Qwest in the Complaint matter and Arizona Dialtone's ongoing
19 billing and pricing disputes with Qwest.

20 On January 28, 2008, Qwest filed its brief as requested. In its brief, Qwest asserted that it has
21 the authority to petition for arbitration because the FCC has interpreted 47 U.S.C. § 252(a) and (b), in
22 the context of amendments to interconnection agreements, to permit ILECs to initiate requests for
23 negotiation. In support, Qwest quoted a footnote from the FCC's Triennial Review Order ("TRO")⁴.
24 Qwest also asserted that a number of state commissions have independently concluded that ILECs
25 may initiate requests for negotiation under 47 U.S.C. § 252 and, in support, cited a procedural order
26

27 ³ This was six days after the deadline for response under 47 U.S.C. § 252(b)(3).

28 ⁴ *In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 F.C.C.R. 16978, 17405 n.2087 (2003)(Report and Order & Order on Remand & Further Notice of Proposed Rulemaking).

1 of the Alabama Public Service Commission⁵ ("Alabama PSC") and an order of the Public Utility
 2 Commission of Oregon⁶ ("Oregon PUC"). Finally, Qwest stated, because the FCC has "conclusively
 3 settled" that, in the context of amendments to interconnection agreements, an ILEC has the authority
 4 to petition for arbitration under 47 U.S.C. § 252(b)(1) after making a request for negotiations, the
 5 timelines in 47 U.S.C. § 252 apply to the Arbitration matter.

6 On January 28, 2008, Staff filed its brief as requested. In its brief, Staff asserted that the
 7 ability of an ILEC to request arbitration under 47 U.S.C. § 252 is "quite well settled," citing the same
 8 footnote from the TRO that Qwest had cited and a couple of court cases⁷. Staff went on to assert that
 9 Arizona Dialtone apparently desires to use the ICA Amendment as leverage to get other changes
 10 made to its ICA or to obtain rulings on how its existing ICA should be interpreted and that the billing
 11 dispute issues raised by Arizona Dialtone would more appropriately be resolved through a complaint
 12 filed by Arizona Dialtone. Staff questioned whether an arbitration proceeding is the appropriate
 13 vehicle to resolve the parties' issues, as Arizona Dialtone does not appear to object to the substance
 14 of the ICA Amendment on a prospective basis. Regarding the issue of the 47 U.S.C. § 252 timelines,
 15 Staff stated that it believes the timelines do apply to the proceeding if it goes forward as an
 16 arbitration, at least with respect to the issues raised in the Arbitration matter. In addition, Staff stated
 17 that it does not support consolidation of the Arbitration matter and the Complaint matter, as
 18 arbitration proceedings address issues on a prospective basis, whereas complaint proceedings
 19 typically address issues pertaining to disputes regarding existing ICAs. Staff asserted that mixing
 20 complaint and arbitration proceedings will ultimately lead to confusion.

21 On January 29, 2008, Arizona Dialtone filed its brief. In its brief, Arizona Dialtone stated
 22 that it had been unable to identify any legal authority regarding whether a request for negotiations by
 23

24 ⁵ *In re Arbitration of the Interconnection Agreement Between Bellsouth Telecommunications, Inc. and Now*
 25 *Communications, Inc.*, Pursuant to the Telecommunications Act of 1996, Docket 27461 (Alabama Public Service
 Commission June 23, 2000)(Procedural Order) ("Alabama Procedural Order").

26 ⁶ *In re Petition of Qwest Corporation for Arbitration of Interconnection Rates, Terms, Conditions, and Related*
Arrangements with Beaver Creek Cooperative Telephone Company, Order No. 02-148 (Public Utility Commission of
 Oregon March 7, 2002)(Order) ("Oregon Order").

27 ⁷ Staff cited *U.S. West Communications v. Sprint Communications Co.*, 275 F.3d 1241 (10th Cir. 2002) and *Illinois Bell*
 28 *Telephone Co. v. Illinois Commerce Commission et al.*, 2007 WL 2815924 (N.D. Ill. 2007). Neither of these cases dealt
 with a scenario such as the one at hand, where an ILEC actually requested the negotiations that led to the petition for
 arbitration.

1 an ILEC is sufficient to trigger the right to petition for arbitration before a state commission under 47
 2 U.S.C. § 252(b). Thus, Arizona Dialtone turned to statutory construction to determine whether
 3 Qwest had authority to petition the Commission. Using the plain language of the statute, Arizona
 4 Dialtone determined that a request for negotiations made by an ILEC to a CLEC would appear to be
 5 insufficient to trigger a right to arbitration. However, by applying the principle of statutory
 6 construction that a statute will be construed to avoid “absurd” results,⁸ Arizona Dialtone concluded
 7 that Qwest should be authorized to petition the Commission for arbitration. Arizona Dialtone stated
 8 that it does not oppose arbitration in this matter so long as the Arbitration matter and Complaint
 9 matter are consolidated and the consolidated matters are set for hearing on a normal timeline rather
 10 than the accelerated timeline required for arbitration. Arizona Dialtone specifically requested that the
 11 Commission consolidate the Arbitration matter and the Complaint matter and set the consolidated
 12 matters for hearing in or after April 2008. Arizona Dialtone did not speak specifically to whether it
 13 believes the arbitration timelines of 47 U.S.C. § 252 apply by law.

14 DISCUSSION

15 Qwest’s Authority to Petition for Arbitration

16 47 U.S.C. § 252(b)(1) provides: “During the period from the 135th to the 160th day
 17 (inclusive) after the date on which an incumbent local exchange carrier receives a request for
 18 negotiation under this section, the carrier or any other party to the negotiation may petition a State
 19 commission to arbitrate any open issues.” By its plain language, this provision authorizes any party
 20 to a negotiation to petition the Commission to arbitrate only within a specified window of time after
 21 an ILEC has received a request for negotiation. The statute does not address whether a request for
 22 negotiation made by an ILEC can also trigger this authority to petition the Commission.

23 As both Qwest and Staff have pointed out, at least in the context of amendments to
 24 interconnection agreements, the FCC has apparently interpreted this statutory provision to allow a
 25 party to petition for arbitration even when an ILEC made rather than received a request for
 26 negotiation. In the TRO footnote cited by both Qwest and Staff, the FCC stated:

27
 28 ⁸ Arizona Dialtone cited *Arpaio v. Steinle*, 201 Ariz. 353, 355 (App. 2001) for this principle.

1 Although section 252(a)(1) and section 252(b)(1) refer to requests that are made *to*
 2 incumbent LECs, we find that in the interconnection amendment context, either the
 3 incumbent or the competitive LEC may make such a request, consistent with the
 4 parties' duty to negotiate in good faith pursuant to section 251(c)(1).⁹

5 In addition, before the TRO was issued, at least two state commissions had ordered that a
 6 petition for arbitration is permissible when an ILEC made rather than received a request for
 7 negotiation.

8 In the Alabama Procedural Order cited by Qwest, the Alabama PSC stated the following:

9 We conclude from our review of the controlling law that it is indeed permissible for
 10 ILECs such as BellSouth to initiate requests for negotiation which trigger the statutory
 11 arbitration window of § 252(b)(1). To construe the provisions of § 252(b)(1) to limit
 12 such requests for negotiations to CLECs in the present telecommunications
 13 environment would undermine the spirit, if not the letter, of § 252(b)(1) to the
 14 substantial prejudice of ILECs. Provisions such as the one found in § I., B of the 1997
 15 agreement between BellSouth and NOW which continue agreements that have by their
 16 terms expired until such time as the parties have negotiated and/or arbitrated new
 17 agreements are common place. To interpret § 252(b)(1) to allow CLECs to exclusively
 18 determine when such agreements are in fact renegotiated would unfairly work to the
 19 detriment of ILECs. Congress surely did not intend such a result.¹⁰

20 Likewise, the Oregon PUC stated the following in the Oregon Order:

21 Beaver Creek's interpretation of 252(b)(1) is overly restrictive. To understand
 22 the meaning of the subsection in question, it is necessary to consider the purpose of the
 23 Act as a whole. Beaver Creek correctly identifies the purpose as fostering competition
 24 in local telephone service.

25 ...
 26 Beaver Creek contends that Sections 251 and 252 of the Act are for the benefit of
 27 CLECs. However, Section 251(b)(5) of the Act states that all local exchange carriers,
 28 CLECs and ILECs alike, have a *duty* to establish reciprocal compensation arrangements
 for the exchange of telecommunications. Beaver Creek has refused to negotiate the
 terms of such arrangements with Qwest. Given this situation, Qwest's recourse to
 Section 252 furthers competition by giving the incumbent a means of requesting the
 competitive provider to come to terms on the exchange of traffic, as all other CLECs in
 Oregon that interconnect with Qwest have done. Allowing Qwest to invoke the
 arbitration procedures in this case levels the playing field for all other CLECs and allows
 the Commission to exercise the jurisdiction over interconnection arrangements given it
 in the Act. In this situation, allowing the incumbent to send a request for arbitration
 furthers the goals of the Act.¹¹

It should be noted that, contrary to the assertions of Qwest and Staff, this matter does not

⁹ TRO n.2087.

¹⁰ Alabama Procedural Order, §III, ¶ 11.

¹¹ Oregon Order, App. A at 4 (footnotes omitted)(emphasis in original).

1 appear to be completely settled. In 2005, the State of New York Public Service Commission ("New
 2 York PSC") reached a conclusion opposite that reached in the Alabama Procedural Order and Oregon
 3 Order, expressly determining that 47 U.S.C. § 252 does not authorize an ILEC to make a request for
 4 negotiations that triggers a right to petition for arbitration. The New York PSC stated:

5 Congress established the § 252 process recognizing that commercial negotiations
 6 would be difficult between CLECs and ILECs when CLECs have "nothing that the
 7 incumbent needs" and would have "little to offer the incumbent in a negotiation." The
 8 language and design of § 252 address the unequal bargaining power that exists in the
 arbitration proceeding between incumbent carriers like Verizon and competitors like
 Choice One, to advance Congress's goal of increased competition.

9 The § 252 procedural rights allow a CLEC to control the timing of a request and
 10 to decide to pursue an agreement. Its language is clear. CLECs, not ILECs, may request
 11 negotiation, and only after such a request may either party file a petition for arbitration
 with the Commission within certain time limits. If Verizon's position were credited,
 12 Verizon would enjoy significant power. It is this type of unequal bargaining power
 between CLECs and ILECs that the provisions of § 252 were enacted to remedy.

13 While § 252 does permit an incumbent "carrier or any other party" to petition for
 14 arbitration, the window for requesting arbitration begins 135 days after "the [ILEC]
 15 receives a request for negotiations." If Congress had intended to permit arbitrations in
 16 situations in which the ILEC initiated negotiations, it could have simply set the window
 "135 days after a request." Instead, Congress explicitly limited arbitrations to CLEC-
 17 requested negotiations. Thus, it is clear to us that the procedures for arbitration in § 252
 are limited to instances in which the CLEC makes the initial request for
 interconnection.¹²

18 The New York PSC did not refer to the TRO footnote referenced by Qwest and Staff, although it did
 19 reference the TRO. It is possible that the New York PSC was unaware of the footnote's existence or
 20 that it believed it inapplicable, as the ICA between the parties had expired.

21 The plain language of 47 U.S.C. § 252(b)(1) does not authorize any party to petition a state
 22 commission for arbitration after an ILEC has made a request for negotiations. However, in the
 23 instant context of an ICA amendment negotiation, it is necessary to determine whether the
 24 interpretation of the statute by the FCC should be given deference and followed. When reviewing an
 25 agency's interpretation of a statute that it administers, two questions must be asked: (1) whether

26
 27 ¹² *In re* Petition of Verizon New York Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for
 28 Arbitration to Establish an Interconnection Agreement with Choice One Communications of New York Inc., Case No.
 05-C-0515 (State of New York Public Service Commission September 23, 2005)(Order Resolving Arbitration)(footnotes
 omitted) ("New York Order").

1 Congress has directly spoken to the precise question at issue, and (2) whether the agency's
2 interpretation is based on a permissible construction of the statute. *Chevron, U.S.A., Inc. v. Natural*
3 *Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984). If Congress's intent is clear, that is the
4 end of the matter, for one must give effect to Congress's unambiguously expressed intent. *Id.* at 842-
5 43. If the precise issue has not been directly addressed by Congress, however, the question becomes
6 whether the agency's interpretation is based on a permissible construction of the statute. *Id.* at 843.
7 To be granted deference, the agency's interpretation need not be the only interpretation that could
8 have been reached or even the interpretation that the inquiring tribunal would have reached if the
9 issue had been before it without the agency's input, just permissible. *Id.* at 843&n.11. If the
10 interpretation represents a reasonable accommodation of conflicting policies that are committed to
11 the agency by statute, it should not be disturbed unless it appears from the statute or its legislative
12 history that the accommodation is one that Congress would not have sanctioned. *Id.* at 845 (citing
13 *U.S. v. Shimer*, 367 U.S. 374, 382, 383 (1961)).

14 When Congress passed the Telecommunications Act of 1996, the telecommunications
15 industry was fundamentally different than it is now. As explained by the Ninth Circuit Court of
16 Appeals, the telecommunications industry before the Act was a "state-supported monopolistic market
17 structure."¹³ As originally conceived in a 1995 bill, the Act's purpose was to "provide for a pro-
18 competitive, de-regulatory national policy framework designed to accelerate rapidly private sector
19 deployment of advanced telecommunications and information technologies and services to all
20 Americans by opening all telecommunications markets to competition." S. Rep. 104-23, at 1-2
21 (1995). Regarding interconnection, the bill originally imposed on local exchange carriers "with
22 market power" a duty to negotiate in good faith and to provide interconnection with other
23 telecommunications carriers that requested interconnection. *Id.* at 19. Originally, the FCC would
24 have been tasked with determining which local carriers possessed market power. *See id.* It appears
25 from the one-sidedness of the bill as originally conceived and the Act as adopted that, as asserted by
26 Arizona Dialtone, Congress did not contemplate the current situation, in which ILECs pursue
27

28 ¹³ *U.S. West Communications v. Jennings*, 304 F.3d 950, 954 (9th Cir. 2002).

1 negotiations with CLECs. In light of this, it is not surprising that Congress did not acknowledge or
2 make any provisions related to this scenario. Congress was silent as to what requirements would
3 pertain under such a scenario. Thus, under *Chevron*, it is appropriate to look to whether the FCC's
4 interpretation of the statutory provision is one that Congress would have condoned. The overriding
5 purpose of the Act was to increase competition. Determining that ILECs do not have the ability to
6 request negotiation that can lead to the right to petition a state commission for arbitration would
7 foreclose ILECs from participating on equal footing with CLECs by allowing CLECs to hold all of
8 the power. Empowering one party to an existing contractual relationship to seek negotiation that
9 provides a right to arbitration while withholding that power from the other party to the contractual
10 relationship could create the type of anticompetitive imbalance that the Act was designed to remedy,
11 as it places the ILEC into a weaker position and seemingly insulates the CLEC from changes in the
12 market and potentially even the law. The FCC's interpretation of 47 U.S.C. § 252(b)(1)—to allow an
13 ILEC in the context of an ICA amendment negotiation to petition for arbitration even though it was
14 the ILEC who requested negotiation—is permissible, as it is consistent with Congress's intent to
15 enhance competition in the telecommunications industry. Thus, under *Chevron*, it should be granted
16 deference and followed.

17 **Applicability of the Timelines in 47 U.S.C. § 252**

18 From the determination that the FCC's interpretation of 47 U.S.C. § 252(b)(1) in the contest
19 of an ICA amendment negotiation should be followed flows the determination that the timelines in 47
20 U.S.C. § 252 apply in the Arbitration matter and should be followed.

21 **Consolidation of the Arbitration Matter and Complaint Matter**

22 As stated in the Procedural Order dated January 16, 2008, and acknowledged by Qwest,
23 Arizona Dialtone, and Staff, the factual bases for the Arbitration matter and the Complaint matter are
24 largely the same. Neither Qwest nor Arizona Dialtone initially opposed consolidation of these
25 matters. Qwest did not mention the consolidation issue in its brief. Arizona Dialtone stated in its
26 brief that it supports consolidation of the matters, but requests that the Commission set the
27 consolidated matters for hearing in or after April 2008 rather than according to the expedited
28 schedule of 47 U.S.C. § 252. Staff, which did not participate in the procedural conference and thus

1 had not voiced an opinion previously on the issue of consolidation, opposed consolidation in its brief.

2 Because Qwest does not appear to be amenable to delaying the procedural schedule for the
3 Arbitration matter; Arizona Dialtone believes that it would be premature to go forward with the
4 February 11, 2008, hearing if the matters are consolidated; and Staff opposes consolidation
5 altogether, it is appropriate to allow the matters to proceed separately, without consolidation.

6 IT IS THEREFORE ORDERED that Qwest had the authority to petition the Commission for
7 arbitration under 47 U.S.C. § 252(b)(1) even though it was Qwest, rather than Arizona Dialtone, that
8 made the request for negotiation under 47 U.S.C. § 252(a)(1) and that the Arbitration matter may
9 proceed before the Commission.

10 IT IS FURTHER ORDERED that the **hearing** in the Arbitration matter shall commence on
11 **February 11, 2008, at 10:00 a.m.**, or as soon thereafter as is practicable, at the Commission's
12 offices, 1200 West Washington, Phoenix, Arizona 85007. **Staff is requested to appear and**
13 **participate in the hearing.**

14 IT IS FURTHER ORDERED that Qwest and Arizona Dialtone shall equally share the costs
15 for transcription of the hearing in the Arbitration matter and shall arrange and pay to have expedited
16 transcripts ("dailies") prepared and provided to the Commission's Hearing Division.

17 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
18 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
19 *pro hac vice*.

20 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized
21 Communications) applies to this proceeding and shall remain in effect until the Commission's
22 Decision in this matter is final and non-appealable.

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that the Arbitrator may rescind, alter, amend, or waive any
2 portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

3 DATED this 31st day of January, 2008.

4
5 
6 SARAH N. HARPRING
7 ARBITRATOR
8
9

10 Copies of the foregoing mailed/delivered
11 this 31st day of January, 2008, to:

12 Norman G. Curtright, Corporate Counsel
13 QWEST CORPORATION
14 20 East Thomas Road, 16th Floor
15 Phoenix, AZ 85012
16 Attorney for Qwest Corporation

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, Arizona 85004-1481

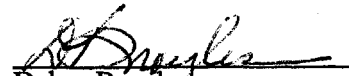
17 Matthew A. Klopp
18 Claudio E. Iannitelli
19 CHIEFETZ, IANNITELLI &
20 MARCOLINI P.C.
21 Viad Tower, 19th Floor
22 1850 North Central Avenue
23 Phoenix, AZ 85004
24 Attorneys for Arizona Dialtone, Inc.

25 Tom Bade, President
26 ARIZONA DIALTONE, INC.
27 7170 West Oakland
28 Chandler, AZ 85226

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

By:


Debra Broyles
Secretary to Sarah N. Harpring